# DOCKET

No. 08-1394
Title: Jeffrey K. Skilling, Petitioner
v.
United States
Docketed: May 13, 2009
Lower Ct: United States Court of Appeals for the Fifth Circuit
Case Nos.: (06-20885)
Decision Date: January 6, 2009
Rehearing Denied: February 10, 2009
Questions Presented

| Date | Proceedings and Orders |
|---|---|
| May 11 2009 | Petition for a writ of certiorari filed. (Response due June 12, 2009) |
| Jun 3 2009 | Order extending time to file response to petition to and including July 13, 2009. |
| Jun 10 2009 | Brief amicus curiae of National Association of Criminal Defense Lawyers filed. |
| Jul 10 2009 | Order further extending time to file response to petition to and including August 12, 2009. |
| Aug 12 2009 | Brief of respondent United States in opposition filed. |
| Aug 26 2009 | DISTRIBUTED for Conference of September 29, 2009. |
| Aug 26 2009 | Reply of petitioner Jeffrey K. Skilling filed. (Distributed) |
| Sep 4 2009 | Letter, dated September 3, 2009, and attachment received from counsel for the petitioner. (Distributed) |
| Oct 5 2009 | DISTRIBUTED for Conference of October 9, 2009. |
| Oct 13 2009 | Petition GRANTED. |
| Nov 13 2009 | The time within which to file the joint appendix and petitioner's brief on the merits is extended to and including December 11, 2009. |
| Nov 13 2009 | The time within which to file respondent's brief on the merits is extended to and including January 25, 2010. |
| Dec 9 2009 | Brief amicus curiae of Chamber of Commerce of the United States of America filed. |
| Dec 11 2009 | Joint appendix filed. (Jt App. in four volumes). (Statement of costs received.) |
| Dec 11 2009 | Brief of petitioner Jeffrey K. Skilling filed. |
| Dec 11 2009 | Motion to file a supplemental volume of the joint appendix under seal filed by petitioner Jeffrey K. Skilling. |
| Dec 14 2009 | SET FOR ARGUMENT ON Monday, March 1, 2010. |
| Dec 15 2009 | Consent to the filing of amicus briefs, in support of either party or of neither party, received from counsel for the petitioner. |
| Dec 16 2009 | Brief amici curiae of Pacific Legal Foundation, and Cato Institute in support of neither party filed. (Distributed) |
| Dec 17 2009 | CIRCULATED. |
| Dec 17 2009 | Brief amicus curiae of Thomas Rybicki filed. (Distributed) |
| Dec 18 2009 | Brief amicus curiae of National Association of Criminal Defense Lawyers filed. (Distributed) |
| Dec 18 2009 | Brief amici curiae of Texas Criminal Defense Lawyers Association, et al. filed. (Distributed) |
| Jan 13 2010 | DISTRIBUTED for Conference of February 19, 2010. |

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|---|---|
| Jan 14 2010 | Record received from U.S.C.A. for 5th Circuit. (1 box) |
| Jan 14 2010 | Record from U.S.D.C. for Southern District of Texas is electronic. |
| Jan 22 2010 | The time within which to file respondent's brief on the merits is further extended to and including January 26, 2010. |
| Jan 26 2010 | Brief of respondent United States filed. (Distributed) |
| Feb 2 2010 | Brief amici curiae of ABC, Inc., et al. filed. (Distributed) |
| Feb 22 2010 | Motion to file a supplemental volume of the joint appendix under seal GRANTED. |
| Feb 22 2010 | Reply of petitioner Jeffrey K. Skilling filed. (Distributed) |
| Mar 1 2010 | Argued. For petitioner: Sri Srinivasan, Washington, D. C. For respondent: Michael R. Dreeben, Deputy Solicitor General, Department of Justice, Washington, D. C. |

# PETITION
# FOR
# WRIT OF
# CERTIORARI

Supreme Court, U.S.
FILED

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IN THE

# Supreme Court of the United States

JEFFREY K. SKILLING,
*Petitioner*,

v.

UNITED STATES OF AMERICA,
*Respondent*.

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether the federal "honest services" fraud statute, 18 U.S.C. § 1346, requires the government to prove that the defendant's conduct was intended to achieve "private gain" rather than to advance the employer's interests, and, if not, whether § 1346 is unconstitutionally vague.

2. When a presumption of jury prejudice arises because of the widespread community impact of the defendant's alleged conduct and massive, inflammatory pretrial publicity, whether the government may rebut the presumption of prejudice, and, if so, whether the government must prove beyond a reasonable doubt that no juror was actually prejudiced.

## PARTIES TO THE PROCEEDING

Petitioner is Jeffrey K. Skilling, defendant-appellant below. Additional defendants in the district court, who were not parties in the court of appeals and are not parties here, were Kenneth L. Lay and Richard A. Causey.

Respondent is the United States of America, appellee below.

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner Jeffrey K. Skilling respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

## OPINIONS BELOW

The opinion of the Fifth Circuit (App. A) is reported at 554 F.3d 529. The relevant opinions of the U.S. District Court for the Southern District of Texas are unpublished.

## JURISDICTION

The Fifth Circuit entered judgment on January 6, 2009. A petition for rehearing was denied on February 10, 2009 (App. B). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant constitutional and statutory provisions are reprinted at App. 159a.

## STATEMENT OF THE CASE

### A. Factual Background And Trial

In late 2001, the seventh-largest company in America, Enron Corporation, went bankrupt in a matter of weeks. App. 2a. The bankruptcy was catastrophic for Houston, where the company was based, and it elicited immediate calls for retribution. The President convened a special investigative team, the Enron Task Force, to find criminal wrongdoing at Enron.

### 1. *The Government Develops And Prosecutes Its Honest-Services Fraud Theory*

Petitioner Jeffrey Skilling was a longtime Enron executive, serving as its President and COO for several years before assuming the position of CEO from February to August 2001. *Id.* He was indicted in 2004 along with Enron Chairman and CEO Ken Lay and Enron Chief Accounting Officer Richard Causey. App. 18a. The cornerstone of the indictment was the conspiracy count, Count One, which alleged an overarching conspiracy to commit wire or securities fraud. *Id.* The remaining counts—securities fraud, making false statements to Enron's auditors, and insider trading—alleged conduct flowing from that conspiracy. *Id.*; R:881-902.[1]

The government took some time to settle on what crimes, if any, had occurred at Enron, R:13292—other than secret looting by the company's CFO Andrew Fastow. Skilling was in no way implicated in Fastow's theft, R:21622-27, 21685, and prosecutors later admitted that the case against Skilling was plagued by "fundamental weaknesses," because he "took steps seemingly inconsistent with criminal intent," there were "no 'smoking gun' documents," and prosecutors relied heavily on cooperating witnesses who had "marginal credibility." John C. Hueston, *Behind the Scenes of the Enron Trial*, 44 Am. Crim. L. Rev. 197, 197-98, 201 (2007).

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[1] Citations to "R" and "SR3" refer to the record and supplemental record in the court of appeals; "JKS" refers to exhibits below; "JQ" refers to prospective juror questionnaires; "Pet. C.A. Br." refers to petitioner's appellate brief.

As it did in other Enron prosecutions, the government focused on alleged acts of "honest services" fraud in prosecuting Skilling. It told the jury that this case was "not about what caused the bankruptcy of Enron," R:36449, or even about "greed," R:37006-07, 37065. The government instead alleged that Skilling took assertedly inappropriate measures to maintain or improve Enron's stock price, in violation of his fiduciary duties of "honesty," "candor," "loyalty," and "honest services." R:14751, 14757-58, 14784, 14799-800, 15114-15, 15864-67, 21224-25, 22769-70, 29610-11, 32262-64, 36522, 36568, 37013-14, 37043, 37065. The allegedly improper actions included business decisions that, according to the government, exposed Enron to an irresponsible level of long-term risk in exchange for a short-term stock-price benefit. R:21239, 22848, 22843.

Skilling challenged the government's case at every turn, presenting evidence showing, for example, that the subject transactions and business decisions were lawful, the risks were fully vetted by outside advisors and the Enron Board, his alleged misstatements were accurate, and all relevant information was disclosed to investors. Pet. C.A. Br. 24-58. The government responded by emphasizing its theory of honest-services fraud—as opposed to securities fraud or deprivation-of-property wire fraud—as a basis for convicting Skilling for conspiracy to commit wire fraud. It argued that whatever else the evidence showed, Skilling at least had violated his duties of "honesty and candor," "loyalty to [Enron's] employees and to investors," and "trust placed in [him]." R:14784, 14799-800; *accord* R:29610-11 ("we're here to decide" whether Skilling "breached

[his] duties and obligations to [Enron's] shareholders and employees"); R:15114-15; R:21224-25; R:29610-11; R:32262-64; R:36568; R:37013-14, 37043. In closing argument, the government declared that Skilling and Lay committed honest-services fraud because they violated a duty to Enron's "employees"—a duty the government described as "a duty of good faith and honest services, a duty to be truthful, and a duty to do their job, ladies and gentlemen, to do their job and do it appropriately." R:37065.

Of critical importance here, the government argued that Skilling committed every alleged act of misconduct with the specific intent to advance Enron's interests—by increasing reported earnings, maintaining an investment-grade credit rating, and improving the price of Enron's stock. R:843-44, 848-49, 852-53. According to the indictment, each alleged act of misconduct was intended "to achieve [Enron's] desired financial reporting results" so that "Enron could present itself more attractively," R:853-54; "to protect Enron" from having to report losses, R:854-55; to "generate earnings and cash flow" and "ensure that Enron met analysts' expectations," R:856-58; and "to report ... higher earnings" and "boost Enron's stock price," R:863; *see* R:860-72. Government witnesses agreed that Skilling was utterly dedicated and loyal to Enron. R:24548-49 ("had the best interests of Enron in mind" and was "fighting for [his] company"), 15954 ("a true believer in Enron"), 18025 ("very committed to the company"), 22986 ("[r]eally dedicated to the company"). As the court of appeals recognized, "Enron created a goal of meeting certain earnings projections," and Skilling's actions were aimed at achieving that goal. App. 27a.

The government did not contend, and the record did not suggest in any way, that Skilling intended to put his own interests ahead of Enron's. To the contrary, the government's stated theory was that its evidence needed only to show—and did only show—"a material violation of a fiduciary duty that defendants owed to Enron and its shareholders." R:41327-28.

### 2. *The Widespread Impact Of Enron's Collapse On Houston Prejudices The Community*

As the trial approached, it became clear that the seismic effect of Enron's collapse on Houston—frequently compared by residents to the September 11 attacks, SR3:544-46—eliminated any possibility that Skilling could receive a fair trial there. Thousands of Houstonians had lost their jobs and retirement savings. SR3:847-50, 1445-48, 1899-900. The bankruptcy caused a severe economic downturn in the city generally, with businesses ranging from hotels to barbershops to the city's largest law firm suffering enormous losses. SR3:864, 933-37, 1197-99, 1201, 1205, 1219-21, 1229-33, 1243-51, 1258-61; 1267-69. One in three Houstonians reported that they personally knew someone harmed by Enron's collapse. R:2683, 2701. The government itself described the *entire community of Houston* as a "victim" of Skilling's alleged crimes. R:42161. Connections to Enron ran so deep that the entire local U.S. Attorney's Office recused itself from the investigation. SR3:608-12. Five judges on the Fifth Circuit recused themselves from this case.

The devastating impact of Enron's collapse on Houston and its residents was reflected in the nonstop media coverage of the events, including blistering daily attacks on the executives—principally Skilling and Lay—deemed responsible for Enron's demise. The extent and scope of coverage can be fully understood only by reviewing the briefs and exhibits prepared below. Several exhibits summarizing and illustrating the coverage are reprinted at App. 141a-158a.

What follows is a sampling of the searing media attacks. One column in the *Houston Chronicle*, entitled "Your Tar and Feathers Ready? Mine Are," expressly demanded a "witch hunt." SR3:746-48. Houstonians guessed that Skilling and Lay had "stole[n] money from investors," "ripped off their stockholders for billions," and "destroyed a great corporation." SR3:522-30, 690-707. Skilling and Lay were compared to Al Qaeda, Hitler, Satan, child molesters, rapists, embezzlers, and terrorists and encouraged to "go to jail" and "to hell." SR3:511-30, 705-06. Some suggested they should face "the old time Code of the West." SR3:854. A local rap song (entitled "Drop the S Off Skilling") threatened Skilling's murder in grisly, personal terms. SR3:868-74. Polling showed that Houstonians routinely labeled Skilling a "pig," "snake," "crook," "thief," "fraud," "asshole," "criminal," "bastard," "scoundrel," "liar," "weasel," "economic terrorist," "evil," "dirty," "deceitful," "dishonest," "greedy," "amoral," "devious," "lecherous," "despicable," and "equivalent [to] an axe murderer," a man who had "no conscience," "stole from employees," and "swindled a lot of people." R:2686, 2727-55.

Skilling was pronounced guilty throughout Houston long before trial. When he appeared before Congress, his testimony was called "b.s." and "unbelievable." SR3:563-68. Claims of innocence were rejected as "ludicrous," "not credible," "distasteful," a "doofus defense," "smoke screen," and "fantasy world." SR3:515-16, 566-68, 602-06, 671-73; R:12066-67; JKS-8. When Skilling was indicted, the *Chronicle*'s headline proclaimed, "Most Agree: Indictment Overdue." SR3:728-30. The paper's negative coverage extended beyond news and business to articles on sports, education, music, and more. *E.g.*, SR3:805-43 ("If statistics do indeed lie ... then Shaquille O'Neal's are like former Enron CEO Jeff Skilling in front of a congressional subcommittee."); R:38388, 38927, 39209, 39212, 39653, 39831. One *Chronicle* columnist became the "chief tainter of potential jurors." R:40054-55. Prosecutors fueled the blaze, giving press conferences and interviews denouncing Skilling as a "corporate crook." SR3:1561; R:12592-94. Polling showed that Houstonians proclaimed Skilling "guilty as sin," and argued "he needs to pay the price," go to "jail for 20 years," and "be hanged." R:2686, 2727-55. A poll conducted by the government itself found that almost 60% of Houstonians already believed Skilling and Lay were guilty. R:4055, 4107-12.

After the Task Force's Arthur Andersen conviction was unanimously reversed by this Court and another Enron trial resulted in no convictions, Houstonians sought their retribution from Skilling and Lay. Their trial was described as the "Big One," the "showdown," and the "main event." SR3:623, 1712, 1936; R:39914, 40002. The *Chronicle* admonished:

"From the beginning, the Enron Task Force has had one true measure of success: Lay and Skilling in a cold steel cage." R:12263-65. Their trial was the "climax" of the "Enron disaster": "After more than four years of waiting, of allowing the hurt and anger and resentment to churn aside," the trial was to bring closure to Houston. R:39904, 39946-47.

### 3. *The Court Refuses To Change Venue And Conducts A Truncated Voir Dire Of A Biased Jury Venire*

Skilling moved to change venue. The district court denied the motion without hearing. R:4433-56. But the record starkly confirmed that the jury venire was as infused with bias as the broader community.

Questionnaires sent by the district court to potential jurors revealed the extent of prejudice. Of the 283 Houstonians who responded, 47% said they, their family, or friends had some connection to Enron or its bankruptcy; 86% had heard of or read about Enron-related cases; 80% demonstrated bias by expressing negative views of Skilling and Lay, negative opinions about the role they played in Enron's collapse, or general anger; 60% had an opinion about the cause of Enron's bankruptcy (almost always "greed," "accounting fraud," "lie[s]," and other "criminal" and "illegal activities" by upper management); 40% openly admitted that they could not be fair or might not be able to consider the evidence impartially; and 40% had an opinion about Skilling's and Lay's guilt or innocence. R:12058-95, 12375-89; R:12084 App. B, N, Q, R (sealed). When asked to express themselves in their own words, prospective jurors did so with venom—Skilling was "the devil," "totally unethical and criminal," "the biggest liar on the face of the earth," "a high class crook" "without a moral compass" who "took everything he could" and "would lie to his own mother if it would further his own cause." R:12084 App. Q. He was "guilty as hell," "guilty—criminally and morally," "guilty without any doubt," and "guilty as sin—come on now." R:12084 App. Q, R. Accordingly, he and Lay should "be stripped of all their assets," "pay back every cent," "spend the rest of their lives in jail," "be reduced to having to beg on the corner and live under a bridge," "hang," "serve many years in prison," "be prosecuted to the maximum." R:12084 App. K, Q, R, S, T. According to a leading expert on jury behavior, only 18 of the 283 questionnaires did *not* raise doubts about the jurors' ability to be fair. R:13812-16, 13823-29, 39905-07.[2]

Based on these questionnaires, the government itself stipulated to striking 42% of the entire pool. R:11890-93, 13593-98. But many blatantly biased jurors remained. One juror came to voir dire and called for vengeance in open court: "I would dearly love to sit on this jury. I would love to claim responsibility, at least 1/12 of the responsibility, for putting these sons of bitches away for the rest of their lives." R:14411; *see* R:14407 ("they knew exactly what they were doing"), 14509-10 ("they stole money"), JQ-61 &

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[2] As the Fifth Circuit noted (App. 57a), all these biases were reinforced when Skilling's co-defendant Richard Causey, who was featured in jurors' questionnaires, pleaded guilty just before trial. His plea was a major news event in Houston, and the media pronounced it the "linchpin" to proving Skilling's guilt. R:12267-373, 12391-92, 12514-90.

R:14558-66 ("angry" about Enron; collapse caused by "criminal" behavior); JQ-74 & R:14585-93, 14602 ("angry" about Enron; Enron "is a wake-up call for large companies to watch out because they may not be able to get away with fraud anymore"; "[t]here is never enough money for the higher-ups so they have to steal it"); JQ-76 & R:14611-12 (Skilling "guilty of knowing what was happening to the company, but did nothing to let the employees know"); JQ-101 & R:14650-59, 14677-78 (Skilling "guilty" because of what juror saw on TV and read in Wall Street Journal; personally lost retirement savings). One juror statement captured the public's (and the media's) basic misunderstanding of the facts: "[I]f there was no fraud, then how did the company collapse?" R:14659.

Given the widespread impact of Enron's collapse on Houston, the extraordinary media coverage, and the pervasive bias in the venire openly exposed by the questionnaires, Skilling sought extensive, non-public, individualized voir dire to try to screen for inevitable juror bias. R:12067-74. The district court went the opposite direction, limiting total voir dire to just one day, conducting most questioning in front of other potential jurors and throngs of reporters, and twice chastising defense counsel for asking too many questions about potential prejudice because the court had prohibited "individual voir dire." R:11050-54, 11803-08, 14489, 14609-10. Just forty-six people were questioned, only for a few minutes each. Only seven were struck for cause, with one excused for hardship. R:14510, 14513, 14585, 14601, 14641, 14666, 14669.

Unsurprisingly, the individuals selected for Skilling's jury shared the broader community's prejudices. *E.g*, JQ-10 ("[c]ollapse was due to greed and mismanagement," Skilling is "suspect"), 11 ("greed" caused Enron's collapse), 20 ("angry" about Enron, "[n]ot enough corporate controls or effective audit procedures to prevent mismanagement," "the involuntary loss of the 401(k) savings made the most impact on me, especially because I have been forced to forfeit my own 401(k) funds to survive layoffs"), 38 ("angry" about Enron, "feel bad for those that worked hard ... only to have it all taken away"), 63 (Skilling "guilt[y]," "I think they probably knew they were breaking the law"), 64 ("angry" about Enron based on news reports), 87 (Enron collapse caused by "[g]reed," "[p]oor management," and "bad judg[ment]"), 90 ("The small average worker saves money for retirement all his life. It's not right for someone or anyone to take or try to take this part of his life away from him."), 113 ("someone had to be doing something illegal"). Several jurors knew former Enron employees who lost savings, and one said he may have owned Enron stock himself. JQ-10, 11, 64; R:14450, 14455-57, 14537-38, 14573-75. One juror exhibited such an obvious bias that even the national media noticed: "If Juror No. 11 is any indication: Look out, defense." Greg Farrell, *USA Today*, Feb. 6, 2006, at Money 2B.

Skilling challenged the entire jury, objected to seven seated jurors including Juror 11, objected to the court's failure to grant him additional peremptories, and objected to not being able to voir dire each juror fully. Jan. 30, 2006 Tr. at 3 (sealed); *see* R:14686-88. Every motion and objection was denied.

### 4. *The Media Frenzy Continues Through Trial And The Houston Jury Inevitably Convicts*

The commencement of trial in Houston on January 30, 2006, only exacerbated the media frenzy. The *Chronicle* covered "courtroom developments minute by minute, hour by hour," with various reporter-bloggers sitting in the courthouse and reporting live. 38897; *see* R:38897-98 ("[i]t was a reality show"), 38914-15, 38946-47, 40066-896; SR3:1691, 1701-09; App. 158a-162a. No detail was spared—including those held inadmissible at trial. R:39440 ("The Dirt That Jurors Won't Hear"). The government's case was described as "solid" and "damning," while the defense was ridiculed as "sweeping revisionism," "delusional," "laughable," and "absurd." R:38981, 39459-61, 39571, 39775-76, 39849, 40089. There was even a column directed specifically to the 12 jurors, warning them not to be "drawn in by the circular arguments and seductive logic" of the defense, and insisting that "common sense" compelled guilty verdicts. R:39886-87. In dismissing concerns about the intensely prejudicial publicity, the district court sharply underscored them, observing that it was simply "impossible to prevent jurors from reading about the case and listening and watching media reports." R:10951.

On May 25, 2006, the jury convicted Skilling on 19 counts: one count of conspiracy to commit securities or wire fraud (18 U.S.C. § 371); 12 counts of securities fraud (15 U.S.C. §§ 78j, 78ff, 17 C.F.R. § 240.10b-5); five counts of making false statements to auditors (15 U.S.C. §§ 78m, 78ff, 17 C.F.R. § 240.13b2-2), and one count of insider trading (15

U.S.C. §§ 78j, 78ff, 17 C.F.R. § 240.10b-5). App. 19a. The jury acquitted Skilling on nine counts of insider trading. App. 19a. The district court denied Skilling's request for a special verdict form. R:35899, 36020, 37189-94. Skilling was sentenced to 292 months' imprisonment, three years of supervised release, and $45 million in restitution. App. 19a. He has been incarcerated since December 2006.

### B. Post-Trial And Appellate Proceedings

1. In the district court, Skilling had sought dismissal of the charges of "honest services" fraud, 18 U.S.C. § 1346, on the ground that the government did not allege that Skilling's conduct was intended to harm Enron or to obtain any personal gain, as in cases of bribery, kickbacks, or self-dealing. R:7330-31. The district court rejected his motion. R:8120. Just after he was convicted, however, the Fifth Circuit vindicated Skilling's position, reversing the Enron-related honest-services fraud conviction of a Merrill Lynch executive because his conduct, though wrongful, was not intended to line his own pockets but was instead intended to advance Enron's interests in maintaining its stock price. *U.S. v. Brown*, 459 F.3d 509, 522 (5th Cir. 2006). Because the improper honest-services theory was part of a general verdict, the court remanded to allow retrial of the defendant on charges uninfected by the honest-services count. *Id.* at 523, 531.

A senior Enron executive achieved the same result in *U.S. v. Howard*, 517 F.3d 731 (5th Cir. 2008). Describing *Brown* as limiting § 1346 to conduct intended "to promote [the employee's] own interests instead of the interests of the employer," *id.* at 735, the Fifth Circuit held that a flawed honest-services theory infected all the counts of conviction of Enron Broadband's CFO, whose conduct also was allegedly intended to maintain or improve Enron's stock price, *id.* at 737-38.

2. After his conviction, Skilling sought bail pending appeal, relying largely on *Brown*. The district court agreed that *Brown* was "likely to result in a reversal or an order for a new trial on Skilling's conviction for conspiracy charged in Count One." R:41893. That count charged honest-services fraud as one of three possible objects of the conspiracy, but the jury's general verdict made it "impossible to tell on which of the various objects of the conspiracy the jury based Skilling's conviction." R:41897; *see Hedgpeth v. Pulido*, 129 S.Ct. 530, 532 (2008) (under *Yates v. U.S.*, 354 U.S. 298 (1957), general verdict that includes legally incorrect theory must be reversed unless government proves that legally flawed theory did not affect convictions). The district court held, however, that Skilling's remaining 18 counts of conviction were uninfected by the flawed honest-services charge, and thus denied Skilling's motion for bail. R:41898-906.

Skilling sought relief from the Fifth Circuit. Judge Higginbotham addressed the motion in chambers, concluding that *Brown*'s construction of § 1346 created "serious frailties" in 14 counts of conviction, which were connected to the conspiracy count by the jury instructions and the government's trial theory. App. 140a. But Judge Higginbotham held that the remaining five counts were uninfected by the honest-services theory, and thus denied Skilling's bail request. *Id.*

3. a. Relying on *Brown*, *Howard*, and precedents from the Second and Seventh Circuits similarly construing § 1346, Skilling argued on appeal that his conduct, even if wrongful in some way, was not the crime of honest-services fraud, because the government conceded that his acts were not intended to advance his own interests instead of Enron's. The Fifth Circuit court agreed that Skilling's acts were not intended to harm Enron or to obtain personal benefit at Enron's expense. App. 27a. But instead of reversing Skilling's conviction on that basis, the Fifth Circuit held that those facts were categorically irrelevant to an honest-services prosecution. App. 23a-25a. The panel construed *Brown* as holding that an employee can escape an honest-services fraud conviction for a breach of fiduciary duty only when the employee was specifically authorized by a supervisor to commit the act in question. App. 26a. Absent such specific authorization (which the court found lacking here, although the government never sought an instruction requiring the jury to find the conduct unauthorized), the court concluded that the only pertinent elements of § 1346 are a material breach of a state-law fiduciary duty and resulting harm to the employer (both of which it concluded had been proved). App. 29a.

b. Skilling also argued that pretrial publicity and pervasive community prejudice deprived him of a fair trial. The Fifth Circuit agreed that the district court had erred in not recognizing that Skilling was entitled to a "presumption of prejudice" arising from "pervasive community bias against those who oversaw Enron's collapse" and "inflammatory pretrial publicity in the Houston area." App. 59a-60a. The court held that Skilling had "demonstrate[d] an extreme situation of inflammatory pretrial publicity that literally saturated the community in which his trial was held." App. 55a (quotation omitted). "The district court," moreover, "seemed to overlook that the prejudice came from more than just pretrial media publicity, but also from the sheer number of victims [of Enron's collapse]." App. 58a.

Despite recognizing the pervasive community bias, the Fifth Circuit held that the failure to change venue was not reversible error, because the government had adequately "rebutted any presumed prejudice," App. 54a—even though the district court itself never applied the presumption. The court concluded that the district court's one-day voir dire sufficed to rebut the presumption of prejudice because the court admonished jurors not to seek vengeance against Enron's officers, warned them not to necessarily trust what they read in newspapers, and looked jurors "in the eye" to assess their credibility. App. 62a-67a.

In particular, the court held that voir dire showed that Juror 11—the juror whose bias was so obvious *USA Today* proclaimed, "Look out, defense," and whom Skilling specifically challenged for cause—was not "unconstitutionally prejudiced." App. 63a, 64a-67a. Despite Juror 11's almost cartoonishly biased comments, *infra* at 36, the court held the government had rebutted the presumption because the district court said it "'looked him in the eye'" and accepted statements he made asserting his impartiality. App. 66a-67a.

c. While affirming Skilling's convictions, the panel held that the district court misapplied a "financial institutions" enhancement, and remanded for resentencing. App. 131a-135a.

## REASONS FOR GRANTING THE PETITION

## I. THIS COURT SHOULD GRANT REVIEW TO ADDRESS THE MEANING AND ENFORCEABILITY OF 18 U.S.C. § 1346

### A. Circuit Decisions Are Squarely In Conflict Over Whether § 1346 Includes A "Private Gain" Requirement

1. The honest-services fraud statute, 18 U.S.C. § 1346, makes it a felony for a public or private employee to use the mail or wires to deprive his employer of its "intangible right" to the employee's "honest services." The statute was enacted 20 years ago in response to *McNally v. United States*, 483 U.S. 350 (1987), which held that the mail fraud statute could not be read as encompassing the judicially-created doctrine of honest-services fraud. *Id.* at 360-61.

In enacting § 1346, however, Congress did nothing to specify the meaning of "the intangible right of honest services," leaving the statute on its face "vague and undefined," *U.S. v. Urciuoli*, 513 F.3d 290, 294 (1st Cir. 2008), with "little guidance as to the conduct it prohibits," *U.S. v. Murphy*, 323 F.3d 102, 116 (3d Cir. 2003). As Justice Scalia recently observed: "Without some coherent limiting principle to define what 'the intangible right of honest services' is, whence it derives, and how it is violated, this expansive phrase invites abuse by headline-grabbing prosecutors in pursuit of local officials, state legislators, and corporate CEOs who engage in any manner of unappealing or ethically questionable conduct." *Sorich v. U.S.*, 129 S.Ct. 1308, 1310 (2009) (Scalia, J., dissenting from denial of certiorari).

Although the federal circuits have now "spent two decades attempting to cabin the breadth of § 1346 through a variety of limiting principles," "[n]o consensus has emerged." *Id.* at 1309. There is instead "wide disagreement among the circuits as to the elements of the 'honest services' offense." *U.S. v. Rybicki*, 354 F.3d 124, 162 (2d Cir. 2003) (en banc) (Jacobs, J., dissenting); Daniel C. Cleveland, Note, *Once Again, It Is Time to "Speak More Clearly" About § 1346 and the Intangible Rights of Honest Services Doctrine in Mail and Wire Fraud*, 34 N. Ky. L. Rev. 117, 125-26 (2007) (§ 1346 only "muddied the waters" and triggered "a number of circuit splits").

2. This case implicates a square circuit conflict over one of "the principal devices the Courts of Appeals have used in an effort to limit § 1346": whether a conviction requires proof that the employee's conduct was intended to obtain "private gain." *Sorich*, 129 S.Ct. at 1310-11. Three circuits now hold that the statute does *not* require proof of private gain, in direct conflict with decisions of two other circuits and considered dicta in a third.

a. The Seventh Circuit has held that an "employee deprives his employer of his honest services only if he misuses his position (or the information he obtained in it) for personal gain." *U.S. v. Bloom*, 149

F.3d 649, 656-57 (7th Cir. 1998). Such "misuse of position" for personal gain is "the line that separates run of the mill violations of state-law fiduciary duty ... from federal crime." *Id.* at 655. Applying that rule in *U.S. v. Thompson*, 484 F.3d 877 (7th Cir. 2007), the Seventh Circuit reversed a § 1346 conviction based on a violation of state procurement rules in awarding a travel contract, because even though the conduct was unlawful, the employee "did not bilk the state out of any money or pocket any of the funds that were supposed to be used to buy travel," but instead sought "to pursue the public interest as [she] understood it." *Id.* at 882, 884.

Similarly, the en banc Second Circuit has held that § 1346, "when applied to private actors"—law-firm partners in that case—"means a scheme or artifice to use the mails or wires to enable an officer or employee of a private entity ... purporting to act for and in the interests of his or her employer ... secretly to act *in his or her or the defendant's own interests* instead." *Rybicki*, 354 F.3d at 141-42 (emphasis added).

Finally, the Sixth Circuit has agreed that § 1346 is "anchored upon the defendant's misuse of his [position] for personal profit." *U.S. v. Turner*, 465 F.3d 667, 676 (6th Cir. 2006) (quotation omitted).

b. The Third and Tenth Circuits, on the other hand, have explicitly rejected any requirement of private gain. *See U.S. v. Welch*, 327 F.3d 1081, 1107 (10th Cir. 2003) (rejecting private-gain requirement as "adding an element to honest services fraud which the text and structure of the fraud statutes do not justify"); *U.S. v. Panarella*, 277 F.3d 678, 692 (3d

Cir. 2002) (rejecting private-gain requirement as lending "little clarity" to § 1346).

The Fifth Circuit in this case also squarely rejected a requirement of private gain (or "personal benefit"). App. 26a-27a, 29a. The panel agreed that Skilling's conduct was intended to advance his employer's interests, App. 27a-28a, but held that it is categorically irrelevant under § 1346 that a defendant "lacked the requisite intent to ... harm the victims or to obtain personal benefit." App. 23a (quotation omitted). Instead, to establish a § 1346 violation, the government need prove only "(1) a material breach of a fiduciary duty imposed under state law ... (2) that results in a detriment to the employer," unless the employee was specifically authorized by a supervisor to commit the act. App. 29a.

c. That conclusion cannot be reconciled with the decisions discussed above. It is most directly in conflict with *Bloom* and *Thompson*, which rejected § 1346 charges specifically because—as here—the government did not allege or prove that the defendant's conduct was intended to achieve any private benefit distinct from the benefits awarded by the employer for pursuing the employer's goals. Although "it is linguistically *possible* to understand 'private gain' as whatever adds to the employee's income or psyche," *Thompson* explains, the rule of lenity counsels a narrower reading, and the "history of honest-services prosecutions is one in which the 'private gain' comes from third parties who suborn the employee with side payments, often derived via kickbacks." 484 F.3d at 884. Where the employee's only benefit is employer-designed compensation, the benefit is not truly "private" to the employee, but is the employer's *own* benefit, which it shares with the employee to encourage performance. Thus, "neither an increase in salary for doing what one's superiors deem a good job, nor an addition to one's peace of mind, is a 'private benefit' for the purpose of § 1346." *Id.*

In short, if Skilling had been prosecuted in the Seventh Circuit, the honest-services fraud charge would have been flatly barred by the private-gain requirement applied in that Circuit's decisions. This case thus crystallizes the circuit conflict over that requirement. And it presents the conflict much more cleanly than did *Sorich*, where the Seventh Circuit *did* find that the defendant sought "private gain," because he intended his acts to benefit third parties *rather than* his employer. *U.S. v. Sorich*, 523 F.3d 702, 709-11 (7th Cir. 2008), *cert. denied*, 129 S.Ct. 1308 (2009). Because there is no allegation here that Skilling sought to advance private interests instead of Enron's, this case is an ideal vehicle for resolving the conflict over the "private gain" limitation on honest-services fraud.[3]

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[3] The government argued below that even if its honest-services theory was legally flawed, the error was harmless because the convictions could have rested on other theories. That argument has no bearing here. The district court specifically found that the error, if there was one, was *not* harmless as to the conspiracy count, and Judge Higginbotham indicated that the error infected 13 other counts as well. *Supra* at 14. The Fifth Circuit expressly declined to address the issue given its conclusion that the honest-service theory was not legally erroneous. App. 29a. Where the court below has not addressed a government claim that an asserted legal error is harmless, this

### B. The Proper Construction Of § 1346 Is An Important Question

The fact that corporate employees are subject to different criminal liability standards in different circuits is reason enough to warrant immediate review, but the need for resolution of the conflict is especially acute given the rapidly escalating significance of § 1346 in the federal prosecutorial arsenal.

Honest-services fraud has become increasingly important in white-collar criminal prosecutions in recent years. Section 1346 prosecutions by the DOJ's Public Integrity Section are constantly increasing,[4] as are the number of fraud convictions obtained pursuant solely to an "honest services" theory.[5]

Use of the honest-services fraud cudgel is only going to expand going forward. The FBI's mortgage-fraud caseload has doubled in the last three years, with some 2,000 active investigations and more than 560 corporate fraud investigations. *Oversight of the Federal Bureau of Investigation: Hearing Before the*

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Court's "normal practice" after correcting the error is to remand for the lower court to address the government's harmless-error argument "in the first instance." *Neder v. U.S.*, 527 U.S. 1, 25 (1999); *see Dobbs v. Zant*, 506 U.S. 357, 359 n.* (1993).

[4] *See, e.g.*, Public Integrity Section, U.S. Dep't of Justice, *Reports to Congress on the Activities and Operations of the Public Integrity Section* (1998 & 2007), *available at* http://www.usdoj.gov/criminal/pin/.

[5] *See, e.g.*, U.S. Sentencing Comm'n, *Sourcebook of Federal Sentencing Statistics* tbl.17 (1998-2008), *available at* http://www.ussc.gov/annrpts.htm (sentences under U.S.S.G. § 2C1.7 (2004) (repealed)).

*S. Comm. on the Judiciary*, 111th Cong. (2009). The Department of Justice, President, and Congress have all announced a push to increase resources directed at investigating and prosecuting acts deemed to be financial fraud. David Segal, *Financial Fraud Rises as Target for Prosecutors*, N.Y. Times, Mar. 12, 2009, at A1, A19; Office of Mgmt. & Budget, *A New Era of Responsibility* 81 (2009); S. 386, 111th Cong. § 3 (2009). The honest-services theory will play a key role in these cases. Brian Walsh & Tiffany Joslyn, *Congress's Hammer: Another Criminal Law*, Heritage Found. (2009), *available at* http://www.heritage.org/press/commentary/ed030409c.cfm. And given the national nature of the alleged frauds, the government is sure to forum-shop its honest-services prosecutions into circuits with the broadest constructions of § 1346.

### C. The Fifth Circuit's Construction Of § 1346 Is Incorrect And Renders The Statute Unconstitutionally Vague

The Fifth Circuit erred in holding that a conviction under § 1346 is valid even where the defendant did not seek to elevate material private interests over his employer's. Even that limitation may not suffice to save the statute from unconstitutional vagueness, but it at least establishes *some* reasonably clear and intelligible boundary to the statute. It also reflects the pre-*McNally* understanding of honest-services fraud Congress sought to adopt in § 1346.

1. As Justice Scalia recently observed, the statute on its face sweeps in a breathtaking range of conduct. *Sorich*, 129 S.Ct. at 1310. The phrase

"honest services" itself provides no clear guidance as to "how far the intangible rights theory of criminal responsibility really extends." *Bloom*, 149 F.3d at 656; *see Sorich*, 523 F.3d at 707 (§ 1346 is "amorphous and open-ended"); *Urciuoli*, 513 F.3d at 294 ("the concept of 'honest services' is vague and undefined"); *Brown*, 459 F.3d at 520 (§ 1346 is a "facially vague criminal statute"); *Murphy*, 323 F.3d at 116 ("the plain language of § 1346 provides little guidance as to the conduct it prohibits"); *U.S. v. Handakas*, 286 F.3d 92, 105 (2d Cir. 2002) ("the text of § 1346 simply provides no clue to the public or the courts as to what conduct is prohibited"), *overruled in part by Rybicki*, 354 F.3d at 144; *U.S. v. Brumley*, 116 F.3d 728, 736 (5th Cir. 1997) (Jolly & DeMoss, JJ., dissenting) (§ 1346 is "general, undefined, vague, and ambiguous").

There is a "serious argument" that, as Justice Scalia put it, "a freestanding, open-ended duty to provide 'honest services'—with the details to be worked out case-by-case"—amounts to "nothing more than an invitation for federal courts to develop a common-law crime of unethical conduct." *Sorich*, 129 S.Ct. at 1310. And because the notion that courts can "discover[]" whether conduct is criminal using common-law reasoning is "utterly anathema," *Rogers v. Tennessee*, 532 U.S. 451, 476-77 (2001) (Scalia, J., dissenting), there is an equally serious argument that § 1346 is unconstitutionally vague. *See Rybicki*, 354 F.3d at 156 (Jacobs, J., joined by Walker, Cabranes, & B.D. Parker, JJ., dissenting).

It should not be the task of federal courts to save a facially vague and unenforceable statute from itself. Only Congress can properly demarcate the boundaries of honest-services fraud. *McNally*, 483 U.S. at 360.

2. Several lower courts, however, have sought to resolve the problem of the statute's facial ambiguity by reading into the text limitations on "honest services" fraud. The "private gain" requirement is among the clearest of those limitations, and it is drawn directly from the pre-*McNally* cases that created the concept of honest-services fraud. *McNally* itself stated the rule: "Under [the prior honest-services] cases, a public official owes a fiduciary duty to the public, and misuse of his office *for private gain* is a fraud." *Id.* at 355 (emphasis added).

Applying a private-gain limitation to honest-services fraud is the only way to even arguably "avoid the constitutional question" raised by the vagueness of the phrase "honest services." *Jones v. U.S.*, 529 U.S. 848, 858 (2000). Absent that limitation, the statute is nothing more than a common-law fiduciary-breach statute, impermissibly criminalizing whatever wrongful or unethical corporate acts a given prosecutor decides to attack. *Brown*, 459 F.3d at 521-22; *Bloom*, 149 F.3d at 654.

Construing the statute so broadly serves no useful purpose and undermines important federalism interests. Where a defendant's conduct is unlawful in some other way, but is intended to advance the employer's interests, other civil and criminal laws *already* exist to prevent and punish such conduct. *Brown*, 459 F.3d at 522 n.13. And because the fiduciary duties allegedly breached in honest-services cases are (as here) typically subject to state-law control, criminalizing such breaches—especially in the absence of a distinct federal interest in preventing the use of interstate wires for unlawful private gain—disrupts the federal-state balance in regulating the employer-employee relationship. *Jones*, 529 U.S. at 858.

To minimize federal intrusion into this area of traditional state regulation and give some notice of the acts subject to criminal sanction, this Court should grant review and hold that § 1346 is limited to a specific category of wrongful acts: those intended to advance the employee's private interests rather than the employer's.

## II. THE COURT SHOULD GRANT REVIEW TO ADDRESS THE PRESUMPTION OF JURY PREJUDICE ARISING FROM PRETRIAL PUBLICITY AND COMMUNITY PASSION

Applying a long line of this Court's precedents addressing the effects of inflammatory pretrial publicity on the jury pool, the Fifth Circuit correctly held that, given the massive pretrial publicity and extraordinary community passion aroused by Enron's collapse, the trial court should have applied a "presumption of prejudice" in determining whether jurors in the Houston venue could be impartial. The Fifth Circuit failed, however, to apply the consequence of that presumption dictated by this Court's precedents, *viz.*, automatic reversal of the conviction.

The court of appeals instead held that the government could—and did—rebut the presumption of prejudice by showing through voir dire statements that "an impartial jury was actually impanelled." App. 55a, *see* App. 62a-67a. That holding conflicts with multiple decisions of this Court, and implicates a square conflict in the federal circuits and state supreme courts over the meaning of those decisions.

### A. The Court Of Appeals Correctly Determined That Pervasive Media Coverage And Community Passion Created A Presumption Of Prejudice

This Court has long held that when "the influence of the news media" in "the community at large" is sufficiently pervasive, a presumption of prejudice arises requiring a change of venue or reversal of the conviction. *Murphy v. Florida,* 421 U.S. 794, 799 (1975); *see Sheppard v. Maxwell*, 384 U.S. 333, 362-63 (1966); *Estes v. Texas*, 381 U.S. 532, 550-51 (1965); *Rideau v. Louisiana*, 373 U.S. 723, 726-27 (1963); *see also Mu'Min v. Virginia*, 500 U.S. 415, 429-30 (1991).

Applying those decisions, the Fifth Circuit here correctly determined that a presumption of prejudice should have been applied to the jurors who adjudicated Skilling's guilt. App. 56a-60a. The "immense volume of coverage" included so much "inflammatory pretrial material," App. 56a, as to "literally saturate[] the community in which [Skilling's] trial was held," App. 55a. And it was "more than just pretrial publicity"—because the "collapse of Enron affected countless people in the Houston area," the community was infused with "non-media prejudice" as well. App. 58a. The widespread, persistent, and scathing demonization of Skilling by the Houston media far exceeded the editorial commentary in this Court's jury-prejudice cases, *supra* at 5-8, 12; polling by both the defense and the government revealed strong majorities of potential jurors expressing open bias, *supra* at 6-8; and questionnaires returned by venire members confirmed the breadth and intensity of the hostility toward Skilling, *supra* at 8-11.

As more generally elaborated above, *supra* at 5-12, the community passion surrounding the prosecution of Jeff Skilling and Ken Lay—the two executives Houstonians deemed personally responsible for Enron's devastating collapse—was as dramatic as any in U.S. criminal trial history. If a presumption of juror prejudice applies in any case, it had to apply in this one, as the court of appeals understood. App. 56a.

### B. The Fifth Circuit's Decision Allowing Rebuttal Of The Presumption Of Prejudice Conflicts With Decisions Of This Court, Four Other Circuits, And Numerous State Supreme Courts

Despite holding that a presumption of juror prejudice applied, the Fifth Circuit upheld the district court's finding that the jurors were *actually* unbiased and that Skilling's trial in Houston was therefore fair. The court of appeals held that when the presumption arises, the government may—and did here—rebut the presumption of prejudice by showing "from the *voir dire* that an impartial jury was actually impanelled." App. 55a (quotation omitted); *see* App. 62a-67a. That holding implicates multiple decisional conflicts warranting certiorari.

### 1. *The Decision Below Conflicts With This Court's Decisions Addressing The Presumption Of Prejudice*

The decision below conflicts directly with this Court's precedents reversing convictions on the basis of a presumption of prejudice without inquiring into whether voir dire rebutted the presumption. *Supra* at 27.[6] While the precedents recognize that not all pretrial publicity compels such a presumption, *e.g.*, *Mu'Min*, 500 U.S. at 429-30, this Court has consistently acknowledged that when a "presumption of prejudice in a community" *does* arise from the "wave of public passion" surrounding the events of a trial, "the jurors' claims that they can be impartial *should not be believed*." *Id.* (quoting *Patton v. Yount*, 467 U.S. 1025, 1031 (1984)) (emphasis added); *see Smith v. Phillips*, 455 U.S. 209, 221-22 (1982) (O'Connor, J., concurring) (a "juror may have an interest in concealing his own bias" or "may be unaware of it").

The Court has thus repeatedly construed its precedents as requiring reversal without a showing of actual prejudice, because when publicity and community hostility are pervasive enough to give rise to a presumption of community prejudice, the

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[6] In *Rideau*, the Court applied the presumption and reversed the conviction "without pausing to examine a particularized transcript of the *voir dire* examination of the members of the jury." 373 U.S. at 727. In *Estes*, after finding that prejudice from pretrial publicity in the case was "inherent," the Court found it unnecessary to undertake "a careful examination of the facts in order to determine whether prejudice resulted." 381 U.S. at 543. And the Court in *Sheppard* likewise did not inquire into actual prejudice after finding pretrial publicity to be "inherently prejudicial." 384 U.S. at 363.

*actual* effect of such factors on individual jurors "cannot be ascertained." *Vasquez v. Hillery*, 474 U.S. 254, 263 (1986); *see U.S. v. Gonzalez-Lopez*, 548 U.S. 140, 149 n.4 (2006); *Chapman v. California*, 386 U.S. 18, 43-44 (1967) (Stewart, J., concurring in the judgment).

The decision below cannot be reconciled with that rule. Despite correctly recognizing that a presumption of prejudice arose from pervasive community and media bias, the court of appeals nevertheless assumed it was appropriate to trust juror statements during voir dire to rebut the presumption. But it is precisely those statements that become unreliable when prejudice is presumed, according to this Court's cases. The Fifth Circuit's holding conflicts directly with those precedents.

### 2. *The Federal Circuits And State Supreme Courts Are Squarely Divided Over Whether The Presumption Of Prejudice Can Be Rebutted*

The decision below also conflicts with decisions of multiple federal circuit and state supreme courts, which have followed this Court's decisions in holding that a presumption of prejudice, once established, cannot be rebutted by juror assurances of impartiality at voir dire. The Fifth and Eleventh Circuits, however, have read this Court's decisions differently, and have held that the presumption of prejudice is rebuttable through voir dire.

a. The Fifth Circuit's decision in this case allowing rebuttal of the presumption is consistent with the Eleventh Circuit's decision in *United States v. Campa*, 459 F.3d 1121 (11th Cir. 2006) (en banc), which relies on an earlier Fifth Circuit decision, *Mayola v. Alabama*, 623 F.2d 992 (5th Cir. 1980). According to *Campa*: "Once the defendant puts forth evidence of the pervasive prejudice against him, the government can rebut any presumption of juror prejudice" by pointing to statements at voir dire. *Id.* at 1143.

b. Four other circuits have held the opposite: a finding of presumed prejudice *requires* a change of venue, and failing that, reversal of the conviction.

The Third Circuit—in an opinion by then-Judge Alito—held in *Riley v. Taylor*, 277 F.3d 261 (3d Cir. 2001), that "[w]here media or other community reaction to a crime or a defendant engenders an atmosphere so hostile and pervasive as to preclude a rational trial process, a court reviewing for constitutional error will presume prejudice to the defendant *without reference to an examination of the attitudes of those who served as the defendant's jurors*." *Id.* at 299 (emphasis added; quotation omitted). As then-Judge Alito explained in another opinion for the en banc court, the presumption cannot be rebutted by voir dire statements precisely because "the community and media reaction" is "so hostile and so pervasive as to make it apparent that even the most careful *voir dire* process would be unable to assure an impartial jury." *Flamer v. Delaware*, 68 F.3d 736, 754 (3d Cir. 1995) (en banc) (quotation omitted).

The Fourth Circuit has likewise held that when pretrial publicity "is so inherently prejudicial that trial proceedings must be presumed to be tainted," the trial court *must* "grant a change of venue *prior to jury selection*." *U.S. v. Higgs*, 353 F.3d 281, 307 (4th

Cir. 2003) (emphasis added); *accord U.S. v. Bakker*, 925 F.2d 728, 732 (4th Cir. 1991).

The Ninth Circuit also has held that "a court *must* grant a motion to change venue" if the defendant establishes that pretrial publicity was "sufficient" to raise "a presumption of prejudice." *Daniels v. Woodford*, 428 F.3d 1181, 1210-11 (9th Cir. 2005) (emphasis added). Once the presumption is established, the voir dire record is irrelevant. *Id.* at 1211-12; *accord U.S. v. Maad*, 75 F. App'x 599, 601 (9th Cir. 2003).

Finally, the Tenth Circuit held that a finding of presumed prejudice cannot be rebutted by jury statements at voir dire. *U.S. v. McVeigh*, 153 F.3d 1166, 1182 (10th Cir. 1998). When a defendant carries the heavy burden of showing presumed prejudice, the court explained, "we simply cannot rely on jurors' claims that they can be impartial," and thus the publicity must be considered "prejudicial as a matter of law." *Id.* (quotation omitted); *accord Goss v. Nelson*, 439 F.3d 621, 628 (10th Cir. 2006).

c. Numerous state supreme courts have likewise held that juror statements at voir dire cannot rebut a presumption that the jurors were prejudiced by inflammatory pretrial publicity. *People v. Leonard*, 157 P.3d 973, 993-94 (Cal. 2007) (when facts establish presumption of prejudice, "the trial is so fundamentally unfair that the ensuing conviction must be reversed without regard to the strength of the prosecution's case or the prospective jurors' protestations of neutrality during voir dire"); *Ruiz v. State*, 582 S.W.2d 915, 921 (Ark. 1979) ("the trial court did the best possible job that could have been done under the circumstances," but prejudicial publicity so saturated community that "the patience of Job, or the wisdom of Solomon, would have not been sufficient to erase the predetermined facts and opinions" of the jurors); *State v. Clark*, 442 So. 2d 1129, 1134-35 (La. 1983) (applying presumption and holding reversal warranted with no need to examine voir dire); *Johnson v. State*, 476 So. 2d 1195, 1211 (Miss. 1985) ("in some circumstances, pretrial publicity can be so damaging, the presumption so great, that no voir dire can rebut it"); *accord DeRosa v. State*, 89 P.3d 1124, 1135 (Okla. Crim. App. 2004); *Commonwealth v. Frazier*, 369 A.2d 1224, 1230 (Pa. 1977); *State v. Laaman*, 331 A.2d 354, 357 (N.H. 1974).

d. If Skilling had been prosecuted in the Third, Fourth, Ninth, or Tenth Circuits, or in any of the foregoing states, he would have been entitled on appeal to a new trial *as a matter of law*, given the presumption of prejudice correctly recognized by the decision below. In the Fifth Circuit, however—as in the Eleventh—the government can rebut the presumption on the basis of juror promises of impartiality. The result is that Skilling now faces more than 20 years in prison for a conviction that would be *categorically unlawful* in other jurisdictions. That intolerable and unjust conflict should be resolved.

### C. Even If The Presumption Were Rebuttable, The Fifth Circuit Legally Erred In Concluding That The Government Carried Its Burden

Assuming the presumption of prejudice can be rebutted at all, the court of appeals committed two important legal errors in holding that the government rebutted the presumption here.

1. The court first improperly deferred to the trial court's determinations about whether individual jurors were actually prejudiced. App. 62a-66a. Those determinations are legally meaningless because they were made on the erroneous assumption that community passion surrounding the case was not severe enough to warrant a presumption that jurors were influenced by such passion. App. 56a; *see Pullman-Standard v. Swint*, 456 U.S. 273, 292 (1982) (appellate court cannot defer to factual findings made on basis of erroneous legal standard). Because the trial court failed to presume prejudice, it did not compel the government to affirmatively establish that each potential juror was actually unprejudiced by the pervasive community and media bias. The trial court instead put the burden on Skilling to prove specific prejudice, and even then denied him the individual voir dire necessary to fully explore each juror's influences and potential biases. *Supra* at 10-11, 16-17. If the trial court had started from an assumption that every potential juror was prejudiced, voir dire necessarily would have been more probing, the record of actual prejudice certainly would have been more extensive, and the court's determinations about actual prejudice likely would have been very different.

2. The court of appeals (and obviously the trial court) also failed to apply the proper legal standard in determining whether the government's evidence from voir dire rebutted the presumption of prejudice. If rebuttal is allowed, the government should be re-

quired to prove "beyond a reasonable doubt" that no seated juror was actually affected by the media and community bias. *Chapman*, 386 U.S. at 24. For example, "a showing that none of the twelve jurors impanelled had ever been exposed, first or second hand, to the inflammatory publicity" might suffice in an appropriate case. *Mayola*, 623 F.2d at 1001. Absent that showing, however, the court must rely only on jurors' own statements and assurances, which simply are not reliable when bias and hostility have pervaded the jurors' community.

The Fifth Circuit did not apply the *Chapman* standard, explicitly or implicitly, but instead found the government had rebutted the presumption simply because the trial court concluded from the jurors' own statements that they could be impartial. App. 62a-67a. The court of appeals' analysis focused on Juror 11—whose statements reflected only the most egregious example of the bias evident among jurors.[7] Juror 11's statements included the following:

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[7] Other jurors also made indefensible statements, such as: Skilling was "guilty"; "I think they probably knew they were breaking the law"; and there were "[n]ot enough corporate controls or effective audit procedures to prevent mismanagement." *Supra* at 11. Further confirming the erroneous legal standard it applied, the court of appeals declined to consider these jurors because Skilling did not specifically challenge each individually for cause. App. 64a. But if a presumption of prejudice applied, then the burden was on the *government* to prove that none of the jurors was actually prejudiced. Skilling should not have been required to invoke and satisfy "for cause" dismissal standards. In any event, Skilling *did* explicitly challenge the entire panel as prejudiced. *Supra* at 11.

- All CEOs are "greedy" people who "stretch[] the legal limits." R:14457, 14460.
- "I'm not going to say that they're all crooks, but, you know ..." and "some get caught and some don't." R:14457-58.
- Lay was "greedy"; when asked whether the defense would "have to bring forward some kind of proof to remove that from your mind," he replied: "I don't hardly know how you could do that." R:14460.
- When asked whether he would assume that the defendants "must have done something illegal," he replied "[n]o, not necessarily," but then added "I'm not sure" and "there's a lot of stuff that goes on that we don't know about that." R:14461.
- He had a close working relationship with a former Enron employee who "[a]bsolutely" lost money in his 401(k) as a result of the collapse. R:14455-56.
- "Anyone from Billy Sol Estes"—the defendant in this Court's *Estes* venue precedent—"to T. Boone Pickens, it's all greed. All the way up." R:14457.

Despite these statements, the court of appeals concluded that the government had rebutted the presumption that Juror 11 was prejudiced, because the district court "looked at him in the eye" and "heard all his questions." R:14462; *see* App. 66a. If that is the standard for rebutting the presumption of prejudice, this Court's decisions holding that due process requires the presumption in appropriate cases have no meaningful force.

## CONCLUSION

The petition should be granted.

Respectfully submitted,

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May 11, 2009

# APPENDIX

# APPENDIX A
# COURT OF APPEALS OPINION

## IN THE UNITED STATES
## COURT OF APPEALS
## FOR THE FIFTH CIRCUIT

No. 06-20885

UNITED STATES OF AMERICA
Plaintiff-Appellee
v.
JEFFREY K SKILLING
Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas

Filed: January 9, 2009

Before SMITH and PRADO, Circuit Judges, and LUDLUM[*], District Judge.

PRADO, Circuit Judge:

A jury convicted former Enron Corporation CEO Jeffrey K. Skilling ("Skilling") for conspiracy, securities fraud, making false representations to auditors, and insider trading. Skilling argues that the government prosecuted him using an invalid legal theory, that the district court used erroneous jury instructions, that the jury was biased, that prosecutors engaged in unconstitutional misconduct, and that his sentence is improper. We affirm the convictions, vacate the sentence, and remand for resentencing.

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[*] District Judge of the Western District of Texas, sitting by designation.

## I. Factual Background

Skilling's rise at Enron began when he founded Enron's Wholesale business in 1990. In 1997, he became Enron's President and Chief Operating Officer and joined the Board of Directors. In February 2001, he became Enron's CEO, and on August 14, 2001, Skilling resigned from Enron.

About four months after Skilling's departure, Enron crashed into sudden bankruptcy. An initial investigation uncovered an elaborate conspiracy to deceive investors about the state of Enron's fiscal health. That conspiracy allegedly included overstating the company's financial situation for more than two years in an attempt to ensure that Enron's short-run stock price remained artificially high. With Congress looking on, the President appointed a team of investigators, the Enron Task Force. The investigation led to criminal charges against Skilling and many others.

According to the government, the conspiracy, led by Skilling and Ken Lay ("Lay"), Enron's CEO until Skilling took over (and again after his abrupt exit), worked to manipulate Enron's earnings to satisfy Wall Street's expectations. Other top Enron officials were key players in the unlawful scheme, including Richard Causey ("Causey"), the Chief Accounting Officer ("CAO"); Andrew Fastow ("Fastow"), the Chief

Financial Officer ("CFO"); and Ben Glisan ("Glisan"), the Treasurer.

### A. Conspiracy and Securities Fraud

Several of Skilling's convictions stem from allegations of conspiracy and securities fraud. The government presented evidence that Skilling engaged in fraud in several of Enron's business endeavors. As an international, multi-billion dollar enterprise, Enron had elaborate financial dealings. At the time of its bankruptcy, the company was comprised of four major businesses: Wholesale, which bought and sold energy; Transportation and Distribution, which owned energy networks; Retail, or Enron Energy Services ("EES"), which sold energy to end-users; and Broadband, or Enron Broadband Services ("EBS"), which bought and sold bandwidth capacity. The government alleged that Skilling took specific fraudulent actions with respect to Wholesale, EES, and EBS.

Wholesale, the most profitable division, accounted for nearly 90% of Enron's revenue. The government presented evidence to show that the conspirators lied about the nature of Wholesale, calling it a "logistics company," even though it was a much more economically volatile "trading company." Construing Wholesale as a "logistics company" had important ramifications for how investors valued the division. In fact, Skilling reportedly told Ken Rice ("Rice"), EBS's CEO, that if investors perceived Enron as a trading company, its stock would "get whacked." The alleged artifice also included masking the losses of Enron's other struggling subdivisions by shifting the losses to Wholesale. That made the struggling divisions appear financially sound and thus encouraged additional investment.

EES was a retail undertaking that Enron created to sell natural gas to customers in deregulated markets. Although Enron had high expectations for EES's profitability after its initial start-up period, EES did not meet these expectations. As of the fall of 2000, various utilities in California owed Enron substantial fees, which Enron had already booked as profits under its "mark-to-market accounting."[1] The utilities, however, were suffering heavy financial losses and stopped paying these fees. Under general accounting rules, Enron should have recorded a loss of hundreds of millions of dollars based on the failure of the utilities to pay the fees, but Skilling and his co-conspirators tried to hide the harm by transferring the losses to Wholesale so that EES would continue to show promise, at least on paper.

The government claims that Skilling hid EES's other problems as well. For example, in early 2001, EES employees allegedly realized that Enron was not properly valuing EES's contracts and that, again because of Enron's use of mark-to-market accounting, Enron would need to record a loss of many millions of dollars. Skilling allegedly told David Delainey, who was in charge of EES, to "bleed the contract issues over time" instead of recognizing the loss all at once.

Skilling again concealed EES's losses within Wholesale in late March 2001, after the California Public Utilities Commission decided to add a surcharge to electricity. Enron lost hundreds of millions of dollars as a result of this surcharge because, under its contracts, it could not pass the extra fees on to its customers. After Skilling was consulted and signed off, Enron shifted the EES losses to Wholesale by transfering EES's risk-management books to Wholesale. Business at EES did not improve, and by August 2001, when Skilling left Enron, EES had lost over $700 million in that year alone. Enron failed to account for these losses properly, making EES appear to be in better financial shape than it really was.

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[1] This means that Enron immediately recognized income, discounted to present value, based on projected future earnings.

EBS was Enron's attempt to enter the telecommunications industry. Enron invested more than $1 billion in EBS, but lost money every quarter as EBS struggled to meet earnings targets. The government claims that in 2000, EBS managed to reach its earnings targets, but only by means of transactions afield from its core business (such as selling and monetizing corporate assets). Skilling allegedly hid from investors EBS's failure to meet earnings targets through core business activities.[2]

The government claims that Skilling knew EBS was struggling, at least based on its record of performance, but that he wanted to announce to the investing public that EBS was doing well and would do even better in 2001. Although EBS's executives said it was impossible, Skilling set EBS's earnings targets for 2001 to be a loss of only $65 million. EBS's personnel initially thought a loss estimate of nearly $500 million was more realistic, and, even with the best circumstances, they projected losses of at least $110 million. Rice, EBS's CEO, warned Skilling that the earnings targets for EBS were wrong, but Skilling apparently would not change them. Skilling told Rice that certain international assets were not producing sufficiently and that "we really need to hang in there for a year or two until EES and EBS could pick up the slack," because Enron "didn't need any more bad news."

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[2] The government claims that, in addition to being hidden, these non-core earnings were suspect in other ways. Many of them came from the sale of a portion of Enron's fiber optic network, commonly referred to as "dark fiber," to LJM2, a pseudo-third party that Fastow controlled. Allegedly, EBS also improperly hedged its investment in Avici, an internet company, in a Raptor Special Purpose Entity ("Raptor"). As discussed below, the Raptors arguably were instruments of fraud.

In 2001, EBS was projected to lose $35 million in the first quarter, but Rice quickly realized that losses would actually be around $150 million. Skilling allegedly found out but would not budge on earnings targets, instead authorizing EBS to fire employees and engage in more non-core business to boost revenues. It worked for the first quarter, although Rice likened the monetizations to "one more hit of crack cocaine on these earnings." EBS faired a little better in the second quarter of 2001, reporting losses of approximately $100 million. Given that EBS continued to lose money, however, Enron decided to merge EBS into Wholesale. Ultimately, Enron lost the entire $1 billion that it had initially invested in EBS.

### B. False Representations About Enron's Finances

Many of the allegations of fraud also stem from Skilling's representations to investors about the financial standing of Wholesale, EES, and EBS. Skilling, as a high ranking corporate officer, held conference calls with investors to update them on the company's progress. The government claims that Skilling misled investors during these calls. For example, on January 22, 2001, Enron released its earnings report for the previous quarter, and Skilling told investors that "the situation in California [regarding the utilities] had little impact on fourth quarter results. Let me repeat that. For Enron, the situation in California had little impact on fourth quarter results." Skilling also stated that "nothing can happen in California that would jeopardize" earnings targets.

However, when he made these statements, Skilling allegedly knew that the California utilities likely could not pay the fees that Enron was expecting and that Enron might have to write off a loss of hundreds of millions of dollars. He also listened silently as Mark Koenig ("Koenig"), Enron's Director of Investor Relations, assured investors that non-core business revenues were a "fairly small" amount of EBS's earnings, which the government alleges was not actually the case.[3]

Three days later, Skilling spoke at Enron's annual analysts conference, claiming that EES and EBS, like Enron's other major businesses, had "sustainable high earnings power." Skilling argues that this statement was merely harmless puffery. At the conference, he also reasserted that Wholesale was "not a trading business. We are a logistics company."

On March 23, 2001, Enron held a special conference call with analysts. Enron's stock price had been declining, and investors began surmising that EBS was having financial difficulties. Skilling comforted investors, saying that EBS was "having a great quarter" and that Enron was "highly confident" that EES would meet its earning target. According to the government, however, Skilling knew both divisions were in extreme financial turmoil.

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[3] Koenig pleaded guilty to securities fraud for this statement, among others.

On April 17, 2001, Skilling hosted another conference call in which he explained the transfer of EES's risk-management books to Wholesale by saying that there was "such capacity in our wholesale business that were—we just weren't taking advantage of that in managing our portfolio at the retail side. And this retail portfolio has gotten so big so fast that we needed to get the best—the best hands working on risk management there." In fact, the government claims that Skilling used the transfer to hide losses. Skilling also said that the "first quarter results were great" at EES, even though they were down substantially, and he again praised EBS, explaining that there was a "very strong development of the marketplace in the commoditization of bandwidth" and "we're feeling very good about the development of this business." Skilling was silent again while Rice and Koenig understated EBS's non-core revenues.

On July 17, 2001, Skilling told investors that EES "had an outstanding second quarter" and was "firmly on track to achieve" its earnings targets. That quarter alone, EES lost hundreds of millions of dollars. Skilling reiterated that the EES reorganization was based on a concern for management efficiency, while the government contends that the only purpose of the EES reorganization was to hide EES's losses.

### C. Manipulating Enron's Reserves

Skilling also allegedly committed fraud when he manipulated Enron's reserves to hit specific earnings targets in the fourth quarter of 1999, the second quarter of 2000, and the fourth quarter of 2000. Stock analysts made various projections regarding the earnings that Enron would announce each quarter, and the average of these estimates was known as the "consensus estimate." The government claims that Skilling was particularly committed to hitting or beating the consensus estimate. In January 2000, the consensus estimate for the fourth quarter of 1999 was earnings of 30¢ per share, which Enron could meet based on its earnings for that quarter. The day before the company was to announce its earnings, however, Koenig brought Skilling unwelcome news: the consensus estimate had jumped a penny per share. Skilling purportedly decided to announce earnings high enough to reach the estimate, even though the increase was not merited by any change in Enron's underlying financial portrait.

Skilling allegedly took a similar unwarranted action at the end of the second quarter of 2000. At that time, the consensus estimate was 32¢ per share. A draft earnings report showed that Enron was going to announce earnings that met the estimate. Skilling, however, wanted to beat the consensus estimate by reporting 34¢ per share. To do that, he allegedly told Wholesale to increase its earnings by $7 million, and then by an additional $7 million. Wholesale acquiesced both times, reopening its books and adding $14 million from a reserve account that it had set aside to cover potential liabilities. The government claims that Enron did not have a business reason for using its reserves to increase Wholesale's earnings, instead doing so solely to exceed analysts' expectations.

The government contends that Skilling improperly used the reserve accounts again later that year. Wholesale's business was very profitable during the second half of 2000, and by late December it had placed over $850 million in reserves. The decision to put that money away was not based on feared future liabilities; instead, Wholesale set that money aside specifically to use in the event of an unfavorable consensus estimate. At the end of the fourth quarter, Skilling ordered that Enron recall some of that money to guarantee that Enron could announce a specific level of earnings.

### D. Third-Party Entities LJM and LJM2

Another avenue of Skilling's alleged fraud came from his use of pseudo third-party entity LJM (and later LJM2) to improperly hedge its investments, doing so through four "secret" oral side deals. Fastow, Enron's CFO, proposed to Skilling and Causey that they create an entity to help Enron more easily meet market expectations. The impetus for creating LJM was the $200 million that Enron had received from an investment in a company called Rhythms Net. Enron wanted to book that money, but it was possible that the value of the investment would drop, meaning that the asset's expected value would have to be reduced. By transferring the asset to a pseudo third-party, however, Enron could hedge its investment without needing to pay market rates for this hedging service. The government claims that LJM became that pseudo third-party. Enron contributed $234 million of its own shares in seed money to form LJM. Fastow, who was LJM's general partner, contributed $1 million, and outside investors contributed $15 million.

Enron encountered a potential problem, however, with using LJM to hedge its investments. Fastow faced a conflict of interest, because he was both Enron's CFO and LJM's general partner. Before Enron could sign a deal with LJM, Enron's code of conduct required the Office of the Chairman, which consisted of Skilling and Lay, to waive the conflict rules, and Enron would have to disclose this waiver in its Securities and Exchange Commission ("SEC") filings.[4] The Office of the Chairman granted the waiver, but allegedly not without first creating controversy within Enron's senior leadership.[5]

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[4] Fastow purportedly explained to Enron's Board of Directors that Causey and Skilling reviewed all Enron/LJM transactions. Causey also told the Board that Enron's Office of the Chairman reviewed all of the deals. In November 2001, when Enron was on the precipice of demise, it told the SEC that it had approval for all of the allegedly fraudulent transactions.

[5] The Board of Directors was nervous that the media would find out, a so-called "Wall Street Journal risk." Many of Enron's managers objected as well, and Vince Kaminski, who was responsible for ensuring that Enron avoid taking unnecessary risks, complained. His objection was this: if both Rhythms Net's and Enron's stock lost value, then LJM could be undercapitalized, as the vast majority of its capital was Enron stock. Kaminski said that Skilling told him his group "acted more like cops, preventing people from executing transactions instead of helping them." After the LJM deal was approved, Skilling transferred Kaminski's group from Enron's Risk and Analytics Control group to Wholesale.

After forming LJM to hedge the Rhythms Net investment, Enron's first deal with LJM involved an interest in a Brazilian power plant, known as Cuiaba, that Enron sold to LJM in 1999. Enron was concerned that its South American unit would not meet its earnings targets, so it decided to sell its interest in Cuiaba to obtain additional revenue. Initially, Enron tried to find a third party to buy the interest in Cuiaba, but was unsuccessful. Skilling, the government claims, then called Fastow and tried to sell Enron's interest in Cuiaba to LJM. Fastow at first was not interested; not only was the asset a bad investment, there was no time for due diligence. Skilling allegedly replied, "Don't worry. I'll make sure that you're all right on the project. You won't lose any money." That oral understanding did not appear in the deal write-up, and the accountants treated it as a real sale, even though, based on the alleged oral understanding between Skilling and Fastow, it was not a legitimate sale.

Enron eventually bought back the Cuiaba interest, paying full value (notwithstanding depreciation) plus 13%. Allegedly to camouflage the deal by avoiding round numbers, LJM received an extra $42,000 above the 13%. To allay further scrutiny, before Enron bought back the interest, Fastow apparently "sold" his interest in LJM to Michael Kopper ("Kopper"), a former Enron executive. That way, Enron did not need to describe the Cuiaba buyback as a transaction with a related party. For this to work, however, Skilling needed to honor his secret oral promise to Fastow that LJM would not lose money on the deal, despite Kopper becoming LJM's chief; the government claims that Skilling orally confirmed that he would do so.

The second allegedly fraudulent secret side deal between Enron and LJM involved the sale of Nigerian barges.[6] The government claims that in the waning days of 1999, LJM warehoused assets for Enron, allowing Enron to claim earnings during 1999 while it arranged for permanent buyers after the end of the year. With respect to the Nigerian barges deal, in late 1999, Enron sought to sell its interest in a group of barges anchored off the coast of Nigeria to meet an earnings target at the end of the quarter. Most investors were nervous about putting money into Nigeria, so Enron could not find a buyer.

Skilling allegedly called Fastow into his office and asked for LJM to buy the barges, again saying he would "make sure" that LJM would not lose money. Fastow initially was reluctant, because he was trying to raise money for LJM and did not want to scare off investors. However, he told Skilling that LJM would purchase the Nigerian barges if Enron could not find another investor within six months.

Fastow, on behalf of Enron, then arranged for Merrill Lynch to buy the Nigerian barges from Enron. Although Merrill Lynch did not really want to purchase the barges, Fastow purportedly made an oral "guarantee"—although he likely did not use that word—that Merrill Lynch would have to hold the barges for only six months in return for a risk-free profit. Because Merrill Lynch's investment was not at risk, the government alleges that Enron improperly treated the transaction as a sale and should not have recorded any earnings from the deal. At the end of the six months, Enron still could not find another buyer, so LJM purchased the interest from Merrill Lynch, apparently without even negotiating over price. Causey allegedly assured LJM that it would earn a guaranteed return on the deal, meaning that there was no transfer of risk to LJM. In sum, the government asserts that the sale of the Nigerian barges was not a true sale and that Enron improperly recognized earnings from the deal.

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[6] Around this time, LJM apparently was running out of capital, so Fastow raised nearly $400 million in capital and formed LJM2, another third-party entity that could conduct deals with Enron. In the fall of 2000, Fastow confided in Skilling that LJM2 was also stretched, and he proposed the creation of LJM3. The government claims that Skilling approved LJM3, saying to put "as much juice" as possible into it. LJM3, however, was never organized. For simplicity, we refer to all of these third-party entities throughout this opinion as "LJM," except where we quote directly from the parties' briefs or the record.

The third secret oral side deal involved the "Raptors," which were special purpose entities ("SPE") that would hedge assets for Enron, meaning that if the assets decreased in value, a Raptor would cover the difference—at least on paper. The government asserts that for Enron to validly hedge an asset, a third party must own at least three percent of the SPE's equity, and that equity must be at risk. The government alleges that LJM acted as that "third party" even though it was not really a separate entity, agreeing to provide the equity that would be at risk.

The government contends that to fund the Raptors, LJM contributed $30 million and Enron spent $400 million of its own stock. Apparently, Fastow was at first against mixing LJM with the Raptors, but the government argues that Skilling convinced him through a "secret" side deal, whereby after funding the Raptors, LJM would recoup its $30 million and would receive an additional $11 million. To do this, Enron agreed to pay $41 million to the Raptors to purchase a "put"[7] on the stock Enron had contributed to the Raptors. The Raptors then transferred that $41 million to LJM. In return, the Raptors had to pay Enron if the price of the stock Enron used to capitalize the Raptors fell below a certain level.[8] LJM thus had nothing at risk; if the hedged assets dropped in value, the hedging Raptor, not LJM, was liable for the loss, and LJM recouped the capital it initially invested in the Raptors, along with an additional $11 million.

To make this transaction work, however, Enron's accountants had to sign off. Arthur Andersen, Enron's external auditor, approved the $41 million payment to LJM once it was described as a return "on" capital to LJM and not a return "of" capital. The auditors allegedly were not told that LJM and Enron did not haggle over the value of the hedged assets or that LJM was not actually a true third party. The government terms this entire deal—both Enron's "put" and LJM's return promise to allow Enron to hedge an asset at any value—the "quid pro quo."

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[7] A "put" is an option contract that gives the holder the right to sell certain stock to the writer of the option at a specified price up to a specified date.

[8] The government alleges that by purchasing the "put," Enron was betting that its own stock price would drop, because the Raptor would have to pay Enron if the price of the stock dropped below a certain point. Skilling claims that the "put" was merely a self-insurance mechanism.

The Raptors were also involved in other transactions. For example, in 2000, Enron hedged EBS's investment in Avici, an internet company, into one of the Raptors. That asset, at its highest value, was worth around $160 million, but the value was decreasing. Enron allegedly hedged the Avici interest with a Raptor at its highest value. The asset plummeted in value over the next few months, but because of the allegedly fraudulent hedge, Enron did not record the loss. Under the government's theory, Skilling knew all about the deceit and even told Fastow to "[k]eep it up." The alleged fraud continued throughout 2000. In fact, by the end of 2000, another one of the Raptors lost more than $100 million because of similar hedging. In total, Enron's use of the Raptors allegedly kept nearly $500 million in losses off of Enron's books in 2000.

The fourth "secret" side deal the government presented was "Global Galactic." Global Galactic was not actually a single deal but instead was the name that Fastow gave to the three-page handwritten list of his undocumented side deals with Enron. Fastow claimed that he created the list to keep track of the various deals and to ensure that he was on the same page as Enron's management on the substance of these deals. Skilling asserts that he had no connection to the deals on this list.

### E. False Representations to Auditors and Insider Trading

In addition to conspiracy and securities fraud, the jury also convicted Skilling for making false representations to auditors and insider trading. Skilling was required to sign Enron's SEC reports. The government claims that Skilling knew of the many false statements within Enron's SEC filings. For example, Enron characterized the money it obtained from selling the Cuiaba interest and from the Nigerian barges deal as legitimate income, when in fact these deals did not represent true sales. Likewise, although Enron had finalized the terms of its buyback of the Cuiaba interest much earlier, Enron allegedly delayed the transaction so Fastow could sell his interest in LJM to Kopper, with the goal of allowing Enron to avoid disclosing the buyback as a related-party transaction in its SEC reports.

The government also claims that Enron kept Arthur Andersen in the dark about the false statements in its SEC filings. Skilling and other members of Enron's management were required to give Arthur Andersen certain management-representation letters, which actually contained known falsehoods, thus negating the validity of the audits. The assertedly false statements included claims that the auditors had access to all financial records and that Enron had disclosed all related-party transactions.

When Skilling resigned from Enron in August 2001, Enron's internal financial numbers were ghastly. On September 6, 2001, Skilling allegedly called his broker and tried to sell 200,000 shares of Enron stock. The sale did not go through, however, because the SEC still listed Skilling as an Enron "affiliate." This designation meant that the broker had to disclose the sale to the SEC and the public, which Skilling wished to avoid. Skilling allegedly told his broker to wait to complete the transaction until he obtained a letter from Enron saying that he was no longer a part of Enron's management.

Skilling sent that letter to his broker on September 10. Because of the terrorist attacks of September 11, Skilling was unable to sell his shares until September 17, the first day the markets reopened. He allegedly called his broker on that day, reiterated his order to sell, and told him he did not want the people at Enron to know about it. When Skilling testified before the SEC in December 2001, he stated that he sold the shares because he became "scared" after the September 11 attack and that "[t]here was no other reason other than September 11th that I sold the stock." The government contends that Skilling's testimony was a lie and that the sale amounted to insider trading.

## II. Trial and Sentence

According to the government, Skilling's conduct constitutes multiple instances of criminal activity. In July 2004, a grand jury returned a superseding indictment charging Skilling, Lay, and Causey with various counts of conspiracy, securities fraud, wire fraud, and insider trading. The indictment charged Skilling with one count of conspiracy to commit securities and wire fraud, fourteen counts of securities fraud, four counts of wire fraud, six counts of making false representations to auditors, and ten counts of insider trading. Several weeks before trial began, Causey pleaded guilty to one count of securities fraud, and the government dropped four counts against Skilling that involved Causey. Skilling and Lay went to trial, and, at the close of its case, the government eliminated four additional counts.

At trial, Skilling argued that he did not break any laws, that he was loyal to Enron, and that he consistently relied on competent legal and accounting advice; he characterized any falsehoods in his statements to analysts as immaterial in content and context. He also challenged the veracity of the government's witnesses, such as Fastow and Glisan. For example, Skilling claimed that Fastow's testimony regarding Skilling and Fastow's alleged shared understanding about Cuiaba and the Nigerian barges—"bear hugs," in Fastow's words—did not reflect what Skilling said but merely consisted of Fastow's misinterpretations. Skilling also questioned the validity of the so-called Global Galactic list.

In May 2006, the jury found Skilling guilty of nineteen counts: one count of conspiracy, twelve counts of securities fraud, five counts of making false statements, and one count of insider trading; the jury acquitted Skilling of nine counts of insider trading. The jury convicted Lay of every count against him.[9] The district court sentenced Skilling to 292 months' imprisonment, three years' supervised release, and $45 million in restitution.

### III. Honest-Services Fraud Allegation

On appeal, Skilling argues that we must reverse all of his convictions because the government used an invalid theory of "honest-services fraud" to convict him. The jury convicted Skilling of one count of conspiracy. The indictment and the government's theory allowed for three objects of the conspiracy: to commit (1) securities fraud, (2) wire fraud to deprive Enron and its shareholders of money and property, and (3) wire fraud to deprive Enron and its shareholders of the honest services owed by its employees. Because the jury returned a general verdict, we cannot know on which of the three objects it relied.

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[9] On July 5, 2006, Lay died, causing the court to vacate his conviction and dismiss his indictment. *United States v. Lay*, 456 F. Supp. 2d 869, 870 (S.D. Tex. 2006).

In *Yates v. United States*, 354 U.S. 298, 312 (1957), the Supreme Court held that where a jury returns a general verdict of guilt that might rest on multiple legal theories, at least one insufficient in law and the others sufficient, the verdict must be set aside. In such a situation, we cannot trust the jury to have chosen the legally sufficient theory and to have ignored the insufficient one, because "[j]urors are not generally equipped to determine whether a particular theory of conviction submitted to them is contrary to law." *Griffin v. United States*, 502 U.S. 46, 59 (1991).

In *Yates*, the defendant was charged with a single count of conspiracy with two objects: (1) to advocate the overthrow of the federal government and (2) to organize the Communist Party of the United States. *Yates*, 354 U.S. at 300. The "organize" object, however, was time-barred and thus legally insufficient. *Id.* at 304-11. The Court overturned the conviction, because it was not apparent whether the jury's verdict rested on the legally sufficient "advocate" object or the legally insufficient "organize" object. *Id.* at 312.

Likewise, if any of the three objects of Skilling's conspiracy offers a legally insufficient theory, we must set aside his conviction to avoid the possibility that the verdict rests on the insufficient theory.[10]

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[10] The Supreme Court recently ruled that, on collateral review, an error of this type is subject to harmless error analysis, in which the "reviewing court finding such error should ask whether the flaw in the instructions 'had substantial and inju-

Skilling avers that the honest-services fraud object of the conspiracy count is legally insufficient, mandating the reversal of the conspiracy conviction. He claims that this would also taint the convictions that rely upon the conspiracy count. We review de novo whether a theory of conviction is legally insufficient. *United States v. Phillips*, 219 F.3d 404, 409 (5th Cir. 2000) ("We review questions of law and application of statutes *de novo*.").

The honest-services statute provides that "the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services." 18 U.S.C. § 1346. That is, the statute defines the "scheme or artifice to defraud" language found in the substantive mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, respectively, to include the substantive crime of depriving another of one's honest services. Thus, wherever mail or wire fraud is an object of a conspiracy, there are two possible objects that can be charged: use of the mails or wires to deprive another of (1) property or money or (2) honest services. *See* 18 U.S.C. §§ 1341, 1343.

Although § 1346 defines "scheme or artifice to defraud," it offers no definition of "honest services." Before the enactment of § 1346 in 1988, courts read the notion of honest services into the wire and mail fraud statutes.[11] Both § 1341 and § 1343 read,

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rious effect or influence in determining the jury's verdict.'" *See Hedgpeth v. Pulido*, 129 S. Ct. 530, 530-31 (2008) (quoting *Brecht v. Abrahamson*, 507 U.S. 619, 623 (1993)).

[11] *See McNally v. United States*, 483 U.S. 350, 355, 358 (1987); *United States v. Brumley*, 116 F.3d 728, 731 (5th Cir.

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property . . . ." Courts read the disjunctive between "to defraud" and "for obtaining money or property" as indicating two separate objects of the scheme or artifice. *McNally v. United States*, 483 U.S. 350, 358 (1987). Money or property was one object, and courts construed "to defraud" to include schemes whose object was the deprivation of intangible rights such as honest services. *Id.*

With *McNally*, the Supreme Court ended prosecution for honest-services fraud as a part of mail fraud. *Id.* at 358-60. The disjunctive phrase in the mail-fraud statute did not indicate that there were two objects of the fraud; rather, the Court "read § 1341 as limited in scope to the protection of property rights." *Id.* at 360. In response, Congress enacted § 1346, which this court and others have held was intended to overturn *McNally* with respect to the inclusion of the right to honest services under §§ 1341 and 1343 and to restore "the honest-services doctrine developed in the years leading up to *McNally*." *United States v. Brumley*, 116 F.3d 728, 733 (5th Cir. 1997) (en banc); *See also United States v. Rybicki*, 354 F.3d 124, 136-37 (2d Cir. 2003) (en banc). Thus, to determine what constituted "honest-services" fraud, we looked to our pre-*McNally* precedent and then set forth the rule for this circuit. *Brumley*, 116 F.3d at 733-34 ("We decide today that services must be owed under state law and that the government must prove in a federal prosecution that they were in fact not delivered.").

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1997) (en banc); *See* also *United States v. Rybicki*, 354 F.3d 124, 133 (2d Cir. 2003) (en banc).

In *United States v. Gray*, 96 F.3d 769 (5th Cir. 1996), we considered the honest-services statute in the context of a private employer and employees. A jury convicted three assistant basketball coaches at Baylor University ("Baylor") of conspiracy to commit mail and wire fraud by depriving Baylor of its honest services through a scheme to obtain credits and scholarships for players in violation of National Collegiate Athletic Association ("NCAA") rules. *Id.* at 772. The coaches argued that honest-services fraud "improperly criminalize[d] mere deceit," because the coaches had broken no law, only a private association's rules, and "they lacked the requisite intent to either harm the victims or to obtain personal benefit . . . . Essentially, [the coaches] argue[d] that their scheme was not intended to harm Baylor but rather to help Baylor by ensuring a successful basketball team." *Id.* at 774. We rejected the argument and noted

> that a breach of fiduciary duty of honesty or loyalty involving a violation of the duty to disclose could only result in criminal mail fraud where the information withheld from the employer was material and that, where the employer was in the private sector, information should be deemed material if the employee had reason to believe the information would lead a reasonable employer to change its business conduct.

*Id.* at 774-75 (quoting *United States v. Ballard*, 680 F.2d 352, 353 (Former 5th Cir. 1982) (per curiam) (on petition for rehearing)). We concluded that the information the coaches withheld, namely that they were cheating, was material; had Baylor been aware of their actions, it undoubtedly would have changed its business conduct by recruiting players who satisfied NCAA requirements. *Id.* at 775. In light of our conclusions, the coaches' conspiracy to violate NCAA rules was a federal crime; that their intent was to help rather than harm the university was of no consequence. *Id.* at 774-75.

In *United States v. Brown*, 459 F.3d 509 (5th Cir. 2006), we again addressed honest-services fraud and refined our jurisprudence. The defendants[12] arranged for the Nigerian barges deal we described above, whereby Enron "sold" three energy-producing barges to Merrill Lynch. *Id.* at 513. The "purchase" allowed Enron to book, as earnings, the money it received from Merrill Lynch, thereby helping Enron meet its earnings targets. *Id.* at 513-16. In return, Enron assured Merrill Lynch a fixed rate of return on the investment—a flat fee—and promised that Enron or a third party would repurchase the barges within six months. *Id.* Such an agreement, however, would have rendered the deal a loan from Merrill Lynch to Enron, because Merrill Lynch had no equity at stake. *Id.* As a loan, the transaction could have no positive impact on Enron's earnings, meaning that it was fraudulent for Enron to book any earnings from the deal. *Id.*

After surveying our prior honest-services jurisprudence, we reversed the defendants' convictions, concluding that their conduct did not fall within the bounds of the honest-services statute. *Id.* at 523. In particular, we held that

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[12] The government tried two Enron employees and four Merrill Lynch employees. Brown, 459 F.3d at 513-14. The jury acquitted one Enron employee and convicted the other five defendants; only the Merrill Lynch employees appealed. *Id.*

> where an employer intentionally aligns the interests of the employee with a specified corporate goal, where the employee perceives his pursuit of that goal as mutually benefitting him and his employer, and where the employee's conduct is consistent with that perception of the mutual interest, such conduct is beyond the reach of the honest-services theory of fraud as it has hitherto been applied.

*Id.* at 522. Importantly, we expounded upon our understanding of honest-services fraud by providing a crucial distinction from the facts in *Gray*:

> *Gray* is distinguishable both factually and legally. *Gray* is dissimilar to this case in part because the opinion recognizes nothing akin to Enron's corporate incentive policy coupled with senior executive support for the deal (the deal was sanctioned by Fastow, Enron's Chief Financial Officer), which together created an understanding that Enron had a corporate interest in, and was a willing beneficiary of, the scheme. The opinion in *Gray* presents only the coaches' own belief that their scheme benefitted the university; no one or any authority outside the cadre of coaches encouraged, approved, or even knew of the wrongdoing.

*Id.* at 522 n.13. Given the gloss this passage places on Gray, we can distill the holding in *Brown* to be the following: when an employer (1) creates a particular goal, (2) aligns the employees' interests with the employer's interest in achieving that goal, and (3) has higher-level management *sanction improper conduct to reach the goal*, then lower-level employees following their boss's direction are not liable for honest-services fraud. Thus, we reversed the convictions of the employees in *Brown* because they were acting both in the corporate interest and at the direction of their employer. *Id.* at 522. In essence, *Brown* created an exception for honest-services fraud where an employer not only aligns its interests with the interests of its employees but also sanctions the fraudulent conduct, i.e., where the corporate decisionmakers, who supervised the employees being prosecuted, specifically authorized the activity.

Skilling does not contest that he owed Enron a fiduciary duty. Instead, he contends that his conduct did not breach that duty, because his fraud was in the corporate interest and therefore was not self-dealing. In particular, Skilling asserts that he did not engage in his conduct in secret. Skilling further latches onto our discussion in *Brown* regarding corporate interest and contends that his actions were not fraudulent because he acted in pursuit of Enron's goals of achieving a higher stock price.

If this were the correct reading of *Brown*, that decision would be in irreconcilable conflict with Gray, which binds us, as the basketball coaches in Gray acted pursuant to their employer's interest of having a winning basketball team. "When two panel opinions appear in conflict, it is the earlier which controls," *Harvey v. Blake*, 913 F.2d 226, 228 n.2 (5th Cir. 1990), as "one panel of this court cannot overrule the decision of another panel," *United States v. Darrington*, 351 F.3d 632, 634 (5th Cir. 2003).

Skilling misconstrues our holding in *Brown*, however, because he fails to recognize the manner in which the court in *Brown* explicitly distinguished *Gray*. As we noted above, *Gray* and *Brown* present different facts; in *Gray*, the basketball coaches acted on their own volition, without any direction from their supervisors, while in *Brown*, a lower-level Enron employee acted at the direction of Fastow, who as a decisionmaker had the authority to tell his employee that Enron sanctioned the particular fraud in question. *See Gray*, 96 F.3d at 775; *see also Brown*, 459 F.3d at 522 & n.13. The difference is that in *Brown*, the employee undertook the specific fraud in question *at the direction of the employer*, while this did not occur in *Gray*. In essence, because the Enron decisionmaker in *Brown* sanctioned the specific fraudulent conduct of its employee, the employee (and the other conspirators) did not deprive Enron of its honest services. Thus, for example, had the basketball coaches in Gray showed that the President of Baylor University or other decisionmakers specifically directed their fraudulent conduct, then they would not have been liable for honest-services fraud.

Applying this rule, Skilling's convictions must stand. First, Enron created a goal of meeting certain earnings projections. Second, Enron aligned its interests with Skilling's personal interests, e.g., through his compensation structure, leading Skilling to undertake fraudulent means to achieve the goal. Third—and fatally to Skilling's argument—no one at

Enron sanctioned Skilling's improper conduct. That is, Skilling does not allege that the Board of Directors or any other decisionmaker specifically directed the improper means that he undertook to achieve his goals. Of course, a senior executive cannot wear his "executive" hat to sanction a fraudulent scheme and then wear his "employee" hat to perpetuate that fraud. Therefore, it is not a matter of Skilling setting the corporation's policy himself. Instead, the question is whether anyone who supervised Skilling specifically directed his actions—such as how Fastow sanctioned the scheme in *Brown*. Skilling never alleged that he engaged in his conduct at the explicit direction of anyone, and therefore he cannot avail himself of the exception from *Brown*.

That the Board of Directors approved several of the fraudulent transactions is of no moment.[13] Tacitly approving a sale is not the same as having senior executives direct their lower-level employees to engage in fraudulent conduct. Skilling reads a requirement of secrecy into the holding in *Brown*, asserting that it is not honest-services fraud if the employer knows of the fraud in question. This argument is unavailing, for two reasons. First, a requirement of secrecy (or lack thereof) does not appear in *Brown*. Second, it makes no difference that the Board of Directors *knew* of Skilling's conduct if Enron (through the Board or its senior executives) did not actually *direct* Skilling to undertake the fraudulent means to achieve his goals.

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[13] Additionally, there is no evidence that the Board of Directors approved of the secret side deals between Skilling and Fastow.

The elements of honest-services wire fraud applicable here are (1) a material breach of a fiduciary duty imposed under state law,[14] including duties defined by the employer-employee relationship,[15] (2) that results in a detriment to the employer.[16] *Brown* sheds light on the employer-employee relationship by creating an exception for when the employer specifically directs the fraudulent conduct. Further, it is a sufficient detriment for an employee, contrary to his duty of honesty, to withhold material information, i.e., information that he had reason to believe would lead a reasonable employer to change its conduct.[17] Accordingly, the jury was entitled to convict Skilling of conspiracy to commit honest-services wire fraud on these elements. Thus, although we do not know on which alleged object of the conspiracy the jury based its verdict, there is no risk that Skilling was convicted of conspiracy based on a legally insufficient theory, and the jury was entitled to convict on any or all of the three objects.[18]

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[14] *See Brumley*, 116 F.3d at 734; *United States v. Ballard*, 663 F.2d 534, 541 (Former 5th Cir. Dec. 1981) (original panel opinion).

[15] *See United States v. Caldwell*, 302 F.3d 399, 409 (5th Cir. 2002); *Brumley*, 116 F.3d at 734.

[16] *See Ballard*, 663 F.2d at 540.

[17] *See Id.* at 540-41; *see also Gray*, 96 F.3d at 774-75 (quoting *Ballard*, 680 F.2d at 353).

[18] Because Skilling's conspiracy conviction is legally sound, the so-called Pinkerton instruction, *see Pinkerton v. United States*, 328 U.S. 640 (1946), was appropriate, and the jury was entitled to convict Skilling of the other substantive counts based on the actions of his co-conspirators.

## IV. Jury Instructions

Skilling raises four alleged errors arising from either the instructions that the district court gave to the jury or Skilling's proposed instructions that the court rejected. Specifically, Skilling asserts that the district court improperly (1) instructed the jury on "deliberate ignorance," (2) denied the jury adequate guidance on the legal meaning of "materiality" in the context of the charges against him, (3) denied his proposed "side deal" instruction, and (4) denied his proposed "good faith" instruction.

In assessing a jury instruction, we consider whether it is a "correct statement of the law," *United States v. Pompa,* 434 F.3d 800, 805 (5th Cir. 2005) (internal quotation marks omitted), whether it "clearly instructs jurors," *id.*, and whether it is "factually supportable," *United States v. Mendoza-Medina*, 346 F.3d 121, 132 (5th Cir. 2003) ("[T]he court may not instruct the jury on a charge that is not supported by evidence.") (internal quotation marks omitted). We review for abuse of discretion and, in deciding whether the evidence reasonably supports the charge, we construe the evidence in the light most favorable to the government. *United States v. Fuchs*, 467 F.3d 889, 901 (5th Cir. 2006) (citing cases), *cert. denied*, 127 S. Ct. 1502 (2007). Additionally, we afford the district court "substantial latitude in formulating the charge." *United States v. Pettigrew*, 77 F.3d 1500, 1510 (5th Cir. 1996). A district court's error in giving the jury instructions is subject to harmless error review. *United States v. Edelkind*, 525 F.3d 388, 397 (5th Cir.), *cert. denied*, 129 S. Ct. 246 (2008); United *States v. Ibarra-Zelaya*, 465 F.3d 596, 607 (5th Cir. 2006), *cert. denied*, 127 S.

Ct. 992, and *cert. denied*, 127 S. Ct. 3056, and *cert. denied*, 127 S. Ct. 3056 (2007).

Moreover, a court's rejection of a proposed jury instruction constitutes "reversible error only where the requested instruction is substantially correct; the actual charge given the jury did not substantially cover the content of the proposed instruction; and where the omission of the proposed instruction would 'seriously impair the defendant's ability to present a defense.'" *United States v. Loe*, 248 F.3d 449, 459 (5th Cir. 2001) (quoting *Pettigrew*, 77 F.3d at 1510).

### A. Deliberate Ignorance

Skilling claims that the district court erred in giving a "deliberate ignorance" instruction. The instruction, borrowed verbatim from Fifth Circuit Pattern Instruction 1.37, informed jurors that they could infer a defendant's knowledge of facts from evidence that he was deliberately ignorant of such facts.[19] Skilling objected to the instruction and argues that the evidence did not support it.

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[19] The instruction stated,

> The word "knowingly," as that term is used throughout these instructions, means that the act was done voluntarily and intentionally, not because of mistake or accident.
>
> You may find that a defendant had knowledge of a fact if you find that the defendant deliberately closed his eyes to what would otherwise have been obvious to him. While knowledge on the part of the defendant cannot be established merely by demonstrating that the defendant was negligent, careless, or foolish, knowledge can be inferred if the defendant de-

"Deliberate ignorance" amounts to a half-step between the highest *mens rea* standard of "knowledge" and the lower standards of "recklessness" and "negligence." It "'denotes a conscious effort to avoid positive knowledge of a fact which is an element of an offense charged, the defendant choosing to remain ignorant so he can plead lack of positive knowledge in the event he should be caught.'" *United States v. Lara-Velasquez*, 919 F.2d 946, 951 (5th Cir. 1990) (quoting *United States v. Restrepo-Granda*, 575 F.2d 524, 528 (5th Cir. 1978)). Thus, we have noted that "[t]he key aspect of deliberate ignorance is the conscious action of the defendant—the defendant [must have] consciously attempted to escape confirmation of conditions or events he strongly suspected to exist." *Id.* In simplest terms, deliberate ignorance is reflected in a criminal defendant's actions that suggest, in effect, "Don't tell me, I don't want to know." *Id.* (citing *United States v. de Luna*, 815 F.2d 301, 302 (5th Cir. 1987)). The instruction's purpose "is to inform the jury that it may consider evidence of the defendant's charade of ignorance as circumstantial proof of guilty knowledge." *Id.*

Although we have frequently upheld the use of deliberate ignorance instructions, we have just as frequently warned of a risk inherent in them:

> Because the instruction permits a jury to convict a defendant without a finding that the defendant was actually aware of the existence of illegal conduct, the deliberate ignorance instruction

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liberately blinded himself to the existence of a fact.

> poses the risk that a jury might convict the defendant on a lesser negligence standard—the defendant *should* have been aware of the illegal conduct.

*Id.* The source of this risk is the potential for confusion about the degree of "deliberateness" required to convert ordinary, innocent ignorance into guilty knowledge. The concern is that once a jury learns that it can convict a defendant despite evidence of a lack of knowledge, it will be misled into thinking that it can convict based on negligent or reckless ignorance rather than intentional ignorance. In other words, the jury may erroneously apply a lesser *mens rea* requirement: a "should have known" standard of knowledge.

In light of that concern, a district court should give the deliberate ignorance instruction only in the "rare" instance where there is significant evidence of deliberate ignorance. *Id.* "[T]he district court should not instruct the jury on deliberate ignorance when the evidence raises only the inferences that the defendant had actual knowledge or no knowledge at all of the facts in question." *Id.* Rather, for the instruction to be warranted, "[t]he evidence at trial must raise two inferences: (1) the defendant was subjectively aware of a high probability of the existence of the illegal conduct; and (2) the defendant purposely contrived to avoid learning of the illegal conduct." *Lara-Velasquez*, 919 F.2d at 951. Thus, where there is no such evidence, a district court should not give the instruction because there is no basis for finding deliberate ignorance. In such a case, it is usually harmful, because it is likely to lead the jury to find that the defendant had the requisite knowledge when he in fact did not. *Cf. Lara-Velasquez*, 919 F.2d at 951 (describing the risk inherent in the deliberate ignorance instruction).

For example, in *United States v. Ojebode*, 957 F.2d 1218, 1229 (5th Cir. 1992), we reversed a conviction for illegally importing heroin into the United States based on an improper deliberate ignorance instruction. The defendant carried drugs on a flight from Germany to Mexico that happened to have a layover in Houston, and he was arrested with the drugs during the layover. *Id.* at 1221-22. He argued that he did not knowingly bring the heroin into the United States because he did not know the flight stopped in Houston. *Id.* at 1223-24.

The district court gave a deliberate ignorance instruction, and the defendant was convicted. *Id.* at 1229. We reversed, because there was no evidence that the defendant had "tried to avoid learning of the flight's scheduled landing in Houston," "refused to view the posted flight schedule[,] or absented himself from places where he would be likely to learn of his Lufthansa Flight's likely stops." *Id.* In other words, there was no purposeful contrivance to avoid learning of a relevant fact, so there was insufficient evidence of deliberate ignorance. *Id.* The instruction therefore posed too great a risk that the jury would convict for his negligent ignorance—i.e., that he *should have known* where the flight was headed. *See id.*

Skilling argues that there was no evidence that he was deliberately ignorant of any illegal acts. Rather, he claims that he "never denied knowledge of the relevant underlying acts," and that at trial he asserted only that those acts were not illegal. He claims that he "agreed" at trial with the government's characterization of him as knowing everything that went on at Enron. He maintains that his "defense was not that he was unaware of fraud, but that there was no fraud." Because his knowledge of allegedly illegal actions was never in dispute, he claims that "[n]either side argued [he] subjectively suspected criminal behavior but *purposely contrived* to avoid learning about it."[20]

Even if Skilling is correct that there is little evidence to support a deliberate ignorance instruction, however, any error in the district court's decision to give the instruction was harmless. This is because the peril to be avoided in cases reversing convictions based on the deliberate ignorance instruction is not present here. By his own admission, Skilling claims that he knew of the allegedly illegal acts, so there is no risk that a jury would rely on the deliberate ignorance instruction to find that he should have known of the acts. Consequently, even if the district court erred in giving the deliberate ignorance instruction in the sense that the instruction was "not supported by evidence," *Mendoza-Medina*, 346 F.3d at 132 (internal quotation marks omitted), any such error was necessarily harmless,[21] as we have repeatedly deemed deliberate ignorance instructions harmless where there is "substantial evidence of actual knowledge." *United States v. Threadgill*, 172 F.3d 357, 369 (5th Cir. 1999) (internal quotation marks omitted).[22]

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[20] Skilling also asserts in his reply brief that "[t]here were very few instances where [he] denied that the alleged conduct happened—he agreed statements were made, conversations occurred, transactions were approved. Indeed, most were a matter of written record. [His] position was that the conduct was not criminal or wrongful."

[21] In his reply brief, Skilling suggests we must reverse for any errors regarding deliberate ignorance instructions because they are *per se* prejudicial. He points to two decisions from this circuit that reversed convictions without discussion of prejudice.

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In the first, the court did not explicitly find prejudice but, in reversing the defendant's convictions for conspiracy to import heroin and importation of heroin, held that in addition to giving an improper deliberate ignorance instruction, the court committed reversible error by failing to properly instruct the jury on the scienter element of those offenses. *Ojebode*, 957 F.2d at 1228-29. In the second case, we also did not explicitly find prejudice but did consider the deliberate ignorance error in combination with various other errors, declaring, "[i]n light of the above discussed erroneous evidentiary rulings and jury instructions, however, we VACATE . . . ." *United States v. Cavin*, 39 F.3d 1299, 1311 (5th Cir. 1994). Because harmless error analysis applies to erroneous deliberate ignorance instructions, *see infra* note 22, we read these two cases as making implicit findings of prejudice and not as silently inventing a novel rule of prejudice *per se*.

[22] *See also Threadgill*, 172 F.3d at 369 ("[I]t is the evidence of actual knowledge that proves fatal to the defendants' claim. We have consistently held that an 'error in giving the deliberate ignorance instruction is . . . harmless where there is substantial evidence of actual knowledge.'" (quoting *United States v. Cartwright*, 6 F.3d 294, 301 (5th Cir. 1993))); *See also, e.g.*, *United States v. Ricardo*, 472 F.3d 277, 286 (5th Cir. 2006) (holding that "[r]esolving this issue [of whether there was sufficient evidence of deliberate ignorance] is unnecessary . . . because the giving of a deliberate ignorance instruction is harmless error where substantial evidence of actual knowledge was presented"), *cert. denied*, 127 S. Ct. 2076, *and cert. denied*, 127 S. Ct. 2080 (2007); *Mendoza-Medina*, 346 F.3d at 135 (holding that where the defendant confessed and other evidence corroborated the confession, "substantial evidence of [defendant's] actual knowledge [rendered] the deliberate ignorance instruction harmless error"); *United States v. Breque*, 964 F.2d 381, 388 (5th Cir. 1992) (finding a deliberate ignorance instruction

Perhaps recognizing that difficulty, Skilling frames the harmfully misleading effect of the deliberate ignorance instruction as a concern that "the jury may well have decided [Skilling] *should have known* the transactions were fraudulent or merely *should have known* they were bad business decisions." In so arguing, Skilling conflates the requisite mental state for the allegedly fraudulent acts ("knowingly") with the requisite mental state for the fraud as a whole ("willfully and with the intent to defraud").[23]

The traditional concern over the deliberate ignorance instruction is that the jury will misconceive the former mental state, which governs the act element—that is, the jury will erroneously assume that a defendant "knowingly" acquiesced in an act because he "should have known" about it. Skilling's concern, however, is different: he suggests that the deliberate ignorance instruction caused the jury to misconceive the latter mental state, which governs the specific-intent element. He asserts that the jury could have erroneously assumed that he had the specific intent to defraud because he "should have

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to be harmless error because "the jury was presented with considerable evidence that [defendant], in fact, *knew* of the reporting requirements").

[23] For example, the court instructed the jury that it had to find four elements to convict Skilling of securities fraud. One element related to the acts done in furtherance of the fraud, and it required a finding that Skilling did those acts "knowingly." Another element related to the specific-intent mental state for the securities fraud offense as a whole, and it required a finding "that the defendant acted willfully and with the intent to defraud."

known" of the acts about which he had, in fact, admitted knowing.

Although plausible in the abstract, the likelihood of confusion in this atypical instance is not substantial, and it becomes even less so when we consider the deliberate ignorance instruction in context with the other jury instructions. Viewed as a whole, the jury instructions made it clear that the deliberate ignorance instruction related only to the act element and not to the specific-intent element.

The district court provided the deliberate ignorance instruction as part of the definition of "knowingly," a word that applied only to the act element of the fraud offense.[24] In contrast, the definition of "willfully" governed solely the specific-intent element. The latter definition was emphatic that neither mere negligence nor bad business judgment suffices to establish the specific intent to defraud, and that instruction contained no deliberate ignorance definition. The "willfully" definition required the jury to find that the defendant acted "with bad purpose either to disobey or disregard the law."[25] Accordingly, there is no significant likelihood of confusion, and any error in issuing the deliberate ignorance instruction was harmless.

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[24] The instructions stated, in relevant part,

> The word "knowingly," as that term is used throughout these instructions, means that the act was done voluntarily and intentionally, not because of mistake or accident.
>
> You may find that a defendant had knowledge of a fact if you find that the defendant deliberately closed his eyes to what would otherwise have been obvious to him. . . .

Another instruction applied "knowingly" to the act element.

[25] The instructions stated, in relevant part,

### B. Materiality

Skilling next asserts that the district court erred in failing to provide the jury with adequate guidance on the legal meaning of "materiality" with regard to the charges against him. After explaining to the jury that false statements or omissions can support a fraud conviction only if they are material, the court instructed the jury on the definition of materiality.[26]

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> The term "willfully," as that term has been used from time to time in these instructions, means that the act was committed voluntarily and purposely, with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or disregard the law.

Another instruction applied "willfully" to the specific-intent element.

[26] The jury received the following instruction:

> If you should decide that a particular statement or a particular omission was misleading at the time that it was made, then you must determine if the fact stated or omitted was a "material" fact or a "material" omission under the evidence received in this case. . . .
>
> In order for you to find a fact or an omission "material," the government must prove beyond a reasonable doubt the fact misstated or the fact omitted was of such importance that it could reasonably be expected to cause or to induce a person to invest or to cause or to induce a person not to invest in Enron stock. Assessment of "materiality" requires you to view the fact misstated or the fact omitted in the context

Skilling argues that the instruction was insufficient to convey to a "lay juror who has never invested in stock in his or her life" what a reasonable investor would consider important. In particular, Skilling contends that the court erred by (1) refusing to instruct the jury about statements that constitute "puffery" and are immaterial as a matter of law, and (2) denying his proposed supplemental instruction as unnecessary in light of the instruction the court ultimately gave.[27] He argues that both instructions

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> of all the circumstances, including the total mix of information made available.
>
> The securities fraud statute under which Counts 2, 14, 16-20 and 22-29 of the indictment are brought is concerned only with such "material" misstatements or such "material" omissions and this statute does not cover minor, or meaningless, or unimportant misstatements or omissions.

[27] The proposed instruction read,

> Statements Inherently Not Material – Certain statements are inherently not material. For example:
>
> Forward-Looking Statements: General predictions about a company, not worded as guarantees, and generalized positive statements about a company's prospects are not material. Similarly, predictions about general economic conditions cannot be considered material.
>
> Context Makes Statements Immaterial: Even if a forward-looking statement is shown to be false, it still cannot form the basis of a claim of securities fraud if other true statements, or other cautionary statements concerning the subject matter of the statements at issue, sufficiently nullify any potentially misleading effect.

were necessary because "reasonable investors disregard all sorts of information that a lay juror might mistakenly consider material, especially when viewed in hindsight," and that the district court's refusal to give each constitutes reversible error. We address each contention in turn.

### 1. Puffery

Skilling first challenges the district court's materiality instruction on the ground that the court should have specifically instructed the jury on puffery. He sought to have the court tell the jury that even if a statement is false or misleading, it is mere "puffery" and therefore immaterial if it is "so lacking in specificity, or so clearly constituting the opinions of the speaker, that no reasonable investor could find the statement important to the total mix of informa-

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> Facts Already Known to the Market: If the truth about certain facts is known to the market, a false statement about the same facts is not material, and therefore cannot form the basis of a claim of securities fraud.
>
> Non-Specific Puffery: Even if a statement is demonstrably false or misleading, it is not material, and therefore cannot support a claim of securities fraud, if it is "puffery" – so lacking in specificity, or so clearly constituting the opinions of the speaker, that no reasonable investor could find the statement important to the total mix of information he or she would consider when making an investment decision. For example, a corporation's commonly-heard self-praise, corporate cheerleading, and mere expressions of optimism are not considered seriously by the marketplace and investors in assessing a potential investment, and thus, such statements are not material.

tion he or she would consider when making an investment decision." Such statements, he notes, include "generalized, positive statements about [a] company's competitive strengths . . . and future prospects." *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 869 (5th Cir. 2003).

Although Skilling is correct that "an expression of opinion not made as a representation of fact," can constitute puffery, *Mfg. Research Corp. v. Greenlee Tool Co.*, 693 F.2d 1037, 1040 (11th Cir. 1982) (citing *Gulf Oil Corp. v. FTC*, 150 F.2d 106, 109 (5th Cir. 1945)), not all such statements of opinion are properly classified as puffery. Similarly, although Skilling correctly points out that "generalized, positive statements about [a] company's competitive strengths . . . and future prospects" can in some cases constitute immaterial puffery, such statements of opinion by corporate insiders are not per se immaterial. *In Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1090, 1098 (1991), the Supreme Court considered statements that a merger proposal would give shareholders "a high value for their shares," and held that such statements could be deemed material. The Court explained,

> [i]t is no answer to argue, as petitioners do, that the quoted statement on which liability was predicated did not express a reason in dollars and cents, but focused instead on the "indefinite and unverifiable" term, "high" value, much like the similar claim that the merger's terms were "fair" to shareholders. The objection ignores the fact that such conclusory terms in a commercial context

> are reasonably understood to rest on a factual basis that justifies them as accurate, the absence of which renders them misleading. Provable facts either furnish good reasons to make a conclusory commercial judgment, or they count against it, and expressions of such judgments can be uttered with knowledge of truth or falsity just like more definite statements, and defended or attacked through the orthodox evidentiary process that either substantiates their underlying justifications or tends to disprove their existence. . . . In this case, whether $42 was "high," and the proposal "fair" to the minority shareholders, depended on whether provable facts about the Bank's assets, and about actual and potential levels of operation, substantiated a value that was above, below, or more or less at the $42 figure, when assessed in accordance with recognized methods of valuation.

*Id.* at 1093-94 (footnote omitted). *Virginia Bankshares* thus instructs that conclusory statements of reasons, belief, or opinion—e.g., "high value" and "fair"—may be so contrary to the verifiable historical facts that they falsely "misstate the speaker's [true] reasons" and "mislead about the stated subject matter." *Id.* at 1095.[28] Indeed, the Supreme Court expressly explained that "there is no room to deny that a statement of belief by corporate directors about a recommended course of action, or an explanation of their reasons for recommending it," can be material. *Id.* at 1090-91.[29]

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[28] *See also, e.g.*, *Serabian v. Amoskeag Bank Shares, Inc.*, 24 F.3d 357, 364-65 (1st Cir. 1994) (deeming material defendant's statements that loan review capabilities were "strong" and allowance for loan losses were "sufficient"); *In re Wells Fargo Sec. Litig.*, 12 F.3d 922, 930 (9th Cir. 1993) (deeming material de-

Skilling's statements about the financial health of Enron were similar to those deemed potentially material in *Virginia Bankshares*. For example, at the 2001 analyst conference (count 23), Skilling claimed that all of Enron's businesses, including EES and EBS, were "uniquely strong franchises with sustainable high earnings power." He also characterized Wholesale as a "stable, high-growth business" and "not a trading business." Similarly, on the March 23, 2001 analyst call (count 24), he claimed EBS was having "a great quarter on the intermediation side of the bandwidth business." Summarizing EBS, he said that there was "essentially strong growth on the intermediation side, strong growth on the content services side, in terms of people, budgets, the whole thing."

The jury was entitled to find those and similar statements material. The government presented evi-

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fendant's statements that loan loss reserves were "adequate" or "substantially secured"); *Shapiro v. UJB Fin. Corp.*, 964 F.2d 272, 282 (3d Cir.1992) (deeming material defendant's statements that loan loss reserves were "adequate" or "solid").

[29] The Court explained that "[s]hareholders know that directors usually have knowledge and expertness far exceeding the normal investor's resources, and the directors' perceived superiority is magnified even further by the common knowledge that state law customarily obliges them to exercise their judgment in the shareholders' interest." *Va. Bankshares*, 501 U.S. at 1091.

dence of contrary, verifiable historical facts regarding the actual condition of EES, EBS, and Wholesale at the time Skilling made these statements: EES was facing a potentially enormous loss; EBS had an unsupportable cost structure, was losing money, was reducing the number of its employees, and had few customers or profitable deals; and Wholesale was heavily dependent on unstable, speculative trading.

Moreover, in addressing the question of "whether statements of reasons, opinions, or beliefs are statements 'with respect to . . . fact[s]' so as to fall within the strictures of [the securities laws]," *id.* at 1091, the Supreme Court has concluded that such statements by directors "are factual in two senses: [(1)] as statements that the directors do act for the reasons given or hold the belief stated and [(2)] as statements about the subject matter of the reason or belief expressed," *id.* at 1092.[30] These statements thus cannot, as a matter of law, be deemed immaterial puffery, and the district court was correct to leave the determination of their materiality to the jury.

Skilling unsurprisingly challenges the government on the meaning of his statements and on the actual condition of the businesses to which the statements referred. But those are fact questions for the jury to resolve. A reasonable jury could find that Skilling's statements were strongly contrary to verifiable historical facts about the conditions of the businesses, that he misstated his true opinion, and that his statements were misleading to a reasonable investor who would have considered them important. Accordingly, the statements were not immaterial as a matter of law, and the evidence is sufficient to support the verdict.

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[30] *See also Va. Bankshares*, 501 U.S. at 1093 ("[C]onclusory terms in a commercial context are reasonably understood to rest on a factual basis that justifies them as accurate, the absence of which renders them misleading."); *In re Wells Fargo Sec. Litig.*, 12 F.3d at 927 ("'[A] complaint does allege an actionable misrepresentation if it alleges that a defendant was aware that mismanagement had occurred and made a material public statement about the state of corporate affairs inconsistent with the existence of the mismanagement.'" (quoting *Hayes v. Gross*, 982 F.2d 104, 106 (3d Cir. 1992))).

### 2. Proposed Supplemental Instruction

Skilling next asserts that the district court committed reversible error by denying his proposed supplemental instruction as unnecessary. Although Skilling's proposed instruction was more specific than the one the court gave, particularly with regard to puffery, the instruction the court provided captured most of the substance of Skilling's proposed supplement and adequately explained "materiality" to the jury.

Skilling's proposed supplemental instruction would have identified four specific types of statements that he contends are inherently immaterial: (1) forward-looking statements, (2) statements that context makes immaterial, (3) statements regarding facts already known to the market, and (4) statements amounting to non-specific puffery. Notwithstanding Skilling's arguments to the contrary, the district court's jury instructions properly addressed each of these types of statements. In its instructions, the court first emphasized that a statement could be deemed material only if it was "of such importance that it could reasonably be expected to cause or to induce a person to invest or to cause or to induce a person not to invest in Enron stock" and explained that "[a]ssessment of 'materiality' requires [the jury] to view the fact misstated or the fact omitted in the context of all the circumstances, including the total mix of information made available."

In light of this charge, Skilling's supplemental instruction was unnecessary to adequately explain "materiality" to the jury. The court expressly instructed the jury to take context into account in assessing materiality. Whether a fact is already known to the market such that a statement contrary to it would not change a person's investment strategy with respect to Enron stock is part of that "context of all the circumstances" that the court instructed the jury to consider.[31] Further, the court was correct not to categorically exclude "forward-looking statements" from the jury's review. If Skilling honestly believed these predictions, then they would not be actionable.[32] However, if Skilling did not honestly believe them, then they could fall within the class of statements the Court identified in *Virginia Bankshares* as potentially actionable in the sense that they implicitly conveyed information about "the subject matter of the reason or belief expressed." *See Va. Bankshares*, 501 U.S. at 1092. Thus, the jury could conclude that such statements were actionable statements of material fact. Finally, as we have stated, the jury did not improperly consider statements that amounted to immaterial puffery as a matter of law.

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[31] Notably, in his brief, Skilling fails to point to any statements purportedly rendered immaterial as facts already known to the market.

[32] The court addressed "forward-looking statements" in its instruction on falsity. The court instructed the jury that "a statement predicting future events concerning Enron or its stock"—i.e. a forward-looking statement—can be considered untrue only if the government" proves beyond a reasonable doubt that the defendant did not believe the statement when he made it, or the defendant knowingly concealed adverse, material information when he made he statement." Moreover, the instruction explained that "[a] prediction is not untrue however, simply because it turns out to be wrong."

Accordingly, because of the essential similarity of the proposed and given instructions, and because the latter accurately explained materiality, we conclude that the district court's refusal to give Skilling's supplemental instruction did not "seriously impair [his] ability to present a defense," *Pettigrew*, 77 F.3d at 1510, and that the court therefore did not abuse its discretion.[33]

## C. Secret Side Deals

Skilling claims that the district court erred in refusing to accept his proposed jury instruction regarding secret side deals. He has waived this objection to the jury instructions, however, because he proposed the side-deal instruction after the mandatory deadline for filing instructions.

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[33] Although not a challenge to the jury instructions, Skilling also questions the materiality of the statements underlying his convictions on securities fraud counts 23 and 24, regarding statements that he made at the January 25, 2001 analyst conference and on the March 23, 2001 analyst call. He argues that the jury improperly convicted him for statements that were "immaterial as a matter of law." For the reasons stated in this subsection regarding the appropriateness of the jury instructions on materiality, however, we find Skilling's challenge to lack merit and reject his assignment of error.

Federal Rule of Criminal Procedure 30 states that "[a]ny party may request . . . that the court instruct the jury on the law," but such a request "must be made at the close of the evidence or at any earlier time that the court reasonably sets." FED. R. CRIM. P. 30(a). Rule 30 is a "mandatory rule," and a "condition precedent to the application of Rule 30 is that the requested instructions be presented to the Judge in timely fashion." *United States v. Mendoza*, 473 F.2d 697, 700 (5th Cir. 1973). "[F]ailure to object to jury instructions waives the objection." *United States v. Swanson*, 572 F.2d 523, 528 (5th Cir. 1978).

Here, the court ordered both parties to file proposed instructions by March 31, 2006. Skilling did not include the side-deal instruction with the other instructions he filed on March 31. Instead, he filed it on May 10. At a jury instruction conference later that day, the court noted that it had received the side-deal instruction "a few hours ago," and rejected it.[34] Because Skilling failed to submit the side-deal instruction to the district court by the deadline, he has waived his objection to the court's refusal to give that instruction.

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[34] Skilling reasons that he did not waive his objection because he submitted the side-deal instruction before two jury instruction conferences that constituted an "ongoing dialogue concerning jury instructions." Although correct at a high level of generality, this argument misses the point. The ongoing dialogue to which Skilling refers involved the parties' responses and modifications to the original instructions required to be filed by March 31. Because he filed no instruction relating to side deals by that date, Skilling's untimely side-deal instruction was not properly part of the ongoing dialogue.

## D. Good-Faith Reliance

In his final jury instruction challenge, Skilling claims that the district court inadequately instructed the jury regarding good-faith reliance[35] and improp-

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[35] The district court's four-paragraph good-faith reliance instruction stated,

> Good faith is a complete defense to the charges of conspiracy, securities fraud, and wire fraud contained in the indictment since good faith on the part of a defendant is inconsistent with intent to defraud or willfulness which is an essential part of the charges. The burden of proof is not on the defendants to prove their good faith since they have no burden to prove anything. The government must establish beyond a reasonable doubt that the defendants acted with specific intent to defraud as charged in the indictment.
>
> One who expresses an opinion honestly held by him, or a belief honestly entertained by him, is not chargeable with fraudulent intent even though his opinion or his belief is mistaken; and, similarly, evidence that establishes only that a person made a mistake in judgment or an error in management, or was careless, does not establish fraudulent intent.
>
> On the other hand, an honest belief on the part of a defendant that a particular business venture was sound and would ultimately succeed would not, in and of itself, constitute "good faith" as used in these instructions if, in carrying out the venture, a defendant knowingly made false or fraudulent representations to others with the specific intent to deceive them.
>
> Reliance on the advice of an accountant or attorney may constitute good faith. To decide whether such reliance was in good faith, you may consider whether the defendant relied on a

erly refused to accept his proposed supplemental instruction on this topic.[36] Skilling argues that the court's instruction confused the jury in suggesting

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> competent accountant or attorney concerning the material fact allegedly omitted or misrepresented, whether the accountant or attorney had all the relevant facts known to the defendant at the time, whether the defendant received an opinion from the accountant or attorney, whether the defendant believed that the advice was given in good faith, and whether the defendant reasonably followed the advice.

[36] The proposed instruction stated,

> Reliance on the advice of attorneys—whether employed by Enron or working for outside law firms and hired by Enron—may constitute good faith. To decide whether such reliance was in good faith, you may consider whether Mr. Skilling, Mr. Lay, or Enron sought the advice of a competent attorney concerning the conduct at issue in this case, whether Mr. Skilling or Mr. Lay reasonably believed that the attorney had received all the relevant facts available at the time, whether Mr. Skilling or Mr. Lay received an opinion from the attorney or were told or could reasonably assume legal counsel had approved the transaction, whether Mr. Skilling or Mr. Lay believed the opinion was given in good faith, and whether Mr. Skilling or Mr. Lay reasonably followed the opinion given.
>
> A defendant is not required personally to provide information to a company's attorney. It is sufficient that a defendant reasonably believed that a reliable and competent officer or employee of the company provided to the attorney the relevant facts known about a given topic at that time.

that a defendant may rely in good faith on the advice of counsel, because a jury could conceivably reason by negative implication that a defendant may not rely on subordinates who in turn rely on counsel. He contends that his supplemental instruction was necessary to make it plain that he could rely on subordinates to vet transactions instead of having to seek legal advice himself.

Such confusion was highly unlikely. The district court's comprehensive good-faith reliance charge correctly and thoroughly explained the law and adequately instructed the jury. In its instruction, the four paragraphs of which are properly read in the conjunctive, the court first explained to the jury the general "complete defense" of good faith, stating, inter alia, that "[o]ne who expresses an opinion honestly held by him, or a belief honestly entertained by him, is not chargeable with fraudulent intent even though his opinion is erroneous or his belief is mistaken . . . ." The court then instructed the jury that "[r]eliance on the advice of an accountant or attorney may constitute good faith." The language of the latter instruction did not say or imply that *only* such reliance constitutes good faith. Rather, it offered a specific example of one type of reliance that falls within the ambit of good-faith reliance.

If, as Skilling argues, he relied in good faith upon subordinates who in turn relied upon counsel, Skilling would have honestly held the opinion he had expressed, even though he was mistaken. This clearly falls within the definition of good faith from the district court's jury instruction. The likelihood of jury confusion was therefore minimal, and the instruction certainly did not "seriously impair [Skilling's] ability to present a defense." *See Pettigrew*, 77 F.3d at 1510. Thus, we reject Skilling's challenge.

## V. Jury Prejudice

In his opening brief, Skilling makes two venue arguments.[37] First, he contends that the community's acrimony was so vitriolic that we should presume that it was impossible for him to receive a fair trial in Houston. Second, he asserts that actual prejudice contaminated the jury box.

We review de novo whether presumed prejudice tainted a trial, and this review includes conducting "an independent evaluation of the facts." *United States v. Williams*, 523 F.2d 1203, 1208 (5th Cir. 1975); *see also United States v. McVeigh*, 153 F.3d 1166, 1179 (10th Cir. 1998). In reviewing actual prejudice, however, we afford greater deference to the district court, because "[t]he determination of whether the seated jury could remain impartial in the face of negative pretrial publicity, and the measures that may be taken to ensure such impartiality, lay squarely within the domain of the trial court." *McVeigh*, 153 F.3d at 1179. Consequently, we "review[] the district court's ruling on jury impartiality for manifest abuse of discretion." *United States v. Wharton*, 320 F.3d 526, 535 (5th Cir. 2003) (internal quotation marks omitted).

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[37] In his reply brief, Skilling adds an argument that publicity *during* the trial also affected the jury. Skilling appears not to have raised that contention as a distinct legal claim in his initial brief, and it is arguably waived. *See, e.g., Cinel v. Connick*, 15 F.3d 1338, 1345 (5th Cir. 1994). We need not reach that question, however, because even after considering the additional material, our opinion is no different.

It would not have been imprudent for the court to have granted Skilling's transfer motion. The issue before us, however, is whether the court committed reversible error. It did not. Skilling has waived most of his argument by failing to challenge jurors for cause during *voir dire.* In fact, of the twelve jurors who sat on the jury, Skilling had objected for cause to only one, and he did not challenge any of the alternate jurors for cause. Therefore, despite our agreement with Skilling that we can presume prejudice in this case, the government rebutted any presumed prejudice, and Skilling has not satisfied his burden as to actual prejudice.

### A. Presumed Prejudice

"A defendant is entitled to a fair trial by an impartial jury which will render its verdict based upon the evidence and arguments presented in court without being influenced by outside, irrelevant sources." *United States v. Chagra*, 669 F.2d 241, 249 (5th Cir. 1982), *abrogated in part on other grounds by Garrett v. United States*, 471 U.S. 773 (1985). To satisfy this constitutional guarantee, veniremembers are not required to be wholly ignorant of a case's facts; instead, "'[i]t is sufficient if the juror can lay aside his impression or opinion and render a verdict based upon the evidence presented in court.'" *Id.* (quoting *Irvin v. Dowd*, 366 U.S. 717, 723 (1961)).

If "an appellant can demonstrate that prejudicial, inflammatory publicity about his case so saturated the community from which his jury was drawn as to render it virtually impossible to obtain an impartial jury," then "[p]roof of such poisonous publicity raises a presumption that appellant's jury was prejudiced, relieving him of the obligation to establish actual prejudice by a juror in his case." *Id.* at 250. Importantly, "[t]his presumption is rebuttable . . . and the government may demonstrate from the *voir dire* that an impartial jury was actually impanelled in appellant's case. If the government succeeds in doing so, the conviction will stand despite appellant's showing of adverse pretrial publicity." *Id.* (citations omitted).[38]

Presumed prejudice "is only rarely applicable," being "confined to those instances where the petitioner can demonstrate an extreme situation of inflammatory pretrial publicity that literally saturated the community in which his trial was held." *Mayola v. Alabama*, 623 F.2d 992, 997 (5th Cir. 1980) (internal quotation marks and citation omitted). The prejudice also must be "apart from mere familiarity with the case." *Id.* at 999.[39]

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[38] Even if a defendant cannot meet the higher burden for finding presumed prejudice, it is possible for the defendant to "raise[] a significant possibility of prejudice" such that the district court's *voir dire* is subject to additional scrutiny. *Chagra*, 669 F.2d at 250 (internal quotation marks omitted). But, "'[b]ecause the obligation to impanel an impartial jury lies in the first instance with the trial judge, and because he must rely largely on his immediate perceptions, federal judges have been accorded ample discretion in determining how best to conduct the *voir dire*.'" *Id.* (quoting *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981) (plurality opinion)).

[39] The government questions whether Skilling has waived his Federal Rule of Criminal Procedure 21(a) venue argument by failing to raise it in his opening brief. If he has, then we review his venue arguments only against the minimum constitutional baseline, which he did raise, and not the standard of Rule 21, which would be more favorable to him. *See Williams*, 523 F.2d at 1209 n.11. Although we are sympathetic to the

Before conducting *voir dire*, the district court denied Skilling's motion to transfer venue,[40] finding that there was inadequate evidence of community hostility. The court noted that "[u]nlike many of the cases cited by [Skilling], the facts in this case are neither heinous nor sensational" and that "for the most part, the reporting appears to have been objective and unemotional," with a "largely fact-based tone." We disagree with that finding and conclude that Skilling was entitled to a presumption of prejudice.

There was sufficient inflammatory pretrial material to require a finding of presumed prejudice, especially in light of the immense volume of coverage.[41] "Inflammatory" is defined as "tending to cause strong feelings of anger, indignation, or other type of upset; [or] tending to stir the passions." BLACK'S LAW DICTIONARY 794 (8th ed. 2004). Our independent review of the record convinces us that the community bias in the Houston area met this standard.[42] Local newspapers ran many personal inter-

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government's argument, we need not reach this issue, because we come to the same result under either standard.

[40] A district court should usually hold a transfer motion in abeyance while conducting *voir dire* instead of dismissing it at the outset. *See* ***Williams***, 523 F.2d at 1209 n.10.

[41] Skilling cites thousands of relevant local television features and hundreds of newspaper articles—many of them on the front page—about himself and Enron.

[42] For instance, there was this statement in a *Houston Chronicle* news story: "'I'm livid, absolutely livid . . . . I have lost my entire friggin' retirement to these people. They have raped all of us.'" In the next line, the paper reported that "[f]ormer Chairman Ken Lay received about $67 million in 2001, while former CEO Jeff Skilling got about $40 million,

est stories in which sympathetic individuals expressed feelings of anger and betrayal toward Enron. These stories are hard to characterize as non-inflammatory, even if the stories were simply reporting the facts. Skilling shows that the *Houston Chronicle* ("*Chronicle*") alone ran nearly one hundred such stories.

Even the *Chronicle*'s sports page wrote of Skilling's guilt as a foregone conclusion.[43] Similarly, the *Chronicle*'s "Pethouse Pet of the Week" section mentioned that a *pet* had "enjoyed watching those Enron jerks being led away in handcuffs." These are but a few examples of the *Chronicle*'s coverage. Moreover, prejudice was inherent in an alleged co-conspirator's well-publicized decision to plead guilty on the eve of trial.[44] In these circumstances, even under typical pretrial publicity precedent, Skilling demonstrated sufficient inflammatory and pervasive coverage to raise a presumption of prejudice.[45]

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according to a bankruptcy court filing Enron released on Monday."

[43] There was, however, a sports-related reason for the sports page to mention Enron, as the Houston Astros renamed their stadium—previously called Enron Field—to Minute Maid Park.

[44] *See United States v. Hawkins*, 658 F.2d 279, 284-85 (5th Cir. Unit A Sept. 1981) (acknowledging the potential prejudicial effect of guilty pleas on remaining defendants).

[45] In its ruling, the district court quoted from a *Chronicle* story that branded Skilling as the "Ultimate Enron defendant" and detailed how, "[r]ather than lying low, . . . Skilling keeps making news" such as being "arrested after a drunken scuffle in New York." The story also said, after quoting Skilling as protesting that he had "nothing to hide," that "[w]e"— presumably the *Chronicle* staff, although possibly an allusion to

More importantly, the district court apparently did not consider the wider context. Given that "every claim of potential jury bias due to publicity turns on its own facts," *United States v. Beckner*, 69 F.3d 1290, 1293 n.3 (5th Cir. 1995), it was not enough for the court merely to assess the tone of the news reporting.[46] The evaluation of the volume and nature of reporting is merely a proxy for the real inquiry: whether there could be a "fair trial by an impartial jury" that was not "influenced by outside, irrelevant sources." *Chagra*, 669 F.2d at 249.

The district court seemed to overlook that the prejudice came from more than just pretrial media publicity, but also from the sheer number of victims. Thousands of Enron employees in Houston lost their jobs, and many saw their 401(k) accounts wiped out. As happens, moreover, in an interconnected economy, Enron's demise spilled over into other industries. Accounting firms that serviced Enron's books had less work, hotels had more open rooms, restaurants sold fewer meals, and so on. The collapse of Enron affected countless people in the Houston area, and the district court failed to account for any of this non-media prejudice.[47]

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the people of Houston—"can't wait for the trial." We do not agree with the district court's characterization of this story as having a "fact-based tone."

[46] There is a need to determine whether the reporting was "straightforward [and] unemotional" or a "long harangue condemning [the defendant]." *Chagra*, 669 F.2d at 251.

[47] Skilling offered opinion polls suggesting that one in three Houston citizens "personally kn[e]w" someone harmed by what happened at Enron. The district court rejected these polls, noting that "courts have commonly rejected such polls as unper-

Precedent also cuts in favor of Skilling. Unsurprisingly (given the strictness of the test for presumed prejudice), there are more cases in which the test has not been satisfied than in which it has, but when we look at the reasons *why* the test was not satisfied, this case is distinguishable. For instance, in *Hale v. United States*, 435 F.2d 737, 748 (5th Cir. 1970), we focused, inter alia, on the lack of "editorials or cartoons denounc[ing]" the defendant. Here, by contrast, there were several editorial cartoons condemning Skilling, one even going so far as to blame him for a supposed recession.

Likewise, in *Calley v. Callaway*, 519 F.2d 184, 206 (5th Cir. 1975) (en banc), we noted that there was evidence of "considerable sympathy" for the defendant, a soldier accused of participating in the My Lai Massacre during the Vietnam War. There was little to no evidence of "considerable sympathy" for Skilling. We also noted in *Calley* that there was a "long period of time between the peak of the publicity and the beginning of the trial." *Id.* at 208. Here, the publicity remained intense throughout. In *United States v. Capo*, 595 F.2d 1086, 1091 (5th Cir. 1979), we put weight on the fact that the trial was held "some distance" from where the crime occurred, about one hundred miles. By contrast, Skilling's trial happened about six blocks from Enron's former headquarters.

In sum, given the unique circumstances of this case, the pervasive community bias against those

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suasive in favor of effective *voir dire* as a preferable way to ferret out any bias." But that is the point: we evaluate the quality of the *voir dire* because Skilling established a presumption of prejudice.

who oversaw Enron's collapse, and the inflammatory pretrial publicity in the Houston area, Skilling was entitled to a presumption of prejudice.

### B. Whether the District Court Empaneled an Impartial Jury

Although there is sufficient evidence here to raise a presumption of prejudice, the "presumption is rebuttable, . . . and the government may demonstrate from the *voir dire* that an impartial jury was actually impanelled in appellant's case. If the government succeeds in doing so, the conviction will stand . . . ." *Chagra*, 669 F.2d at 250 (citation omitted). An effective *voir dire* generally is a strong disinfectant of community prejudice,[48] but it is especially important in cases such as this one with a great deal of prejudice.[49]

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[48] *See Calley*, 519 F.2d at 209 n.45 ("There has been a greater willingness to uphold a trial court's determination that jurors were capable of rendering an impartial verdict where that conclusion was reached after deliberate, searching, and thorough *voir dire*.").

[49] A district court has "broad discretion" in conducting *voir dire*, and

> [t]he court's discretion extends both to the decision whether to propound questions proffered by counsel and whether jurors should be questioned collectively or individually out of the presence of other jurors. This broad discretion, however, is limited by the requirements of due process, and the reviewing court must independently evaluate the voir dire testimony of empanelled jurors, as well as the record as a whole, and determine whether the method of voir dire adopted by the district court is capable of giving reasonable assurance that prejudice

Non-exhaustive factors we consider in determining the adequacy of *voir dire* include (1) the percentage of the entire pool of veniremembers who evidenced bias, *Irvin*, 366 U.S. at 727 (noting that almost 90% of the venire was biased); (2) whether the court questioned the veniremembers individually, *see, e.g., Capo*, 595 F.2d at 1091, (3) whether the court questioned the veniremembers thoroughly concerning their knowledge of the circumstances surrounding the alleged crime, *id.*; (4) whether the court asked each veniremember specifically about the nature and extent of any preconceived notions, *id.*; (5) whether the court asked each veniremember about his or her capability to render an impartial verdict, *id.*; (6) the length of time the process took, *id.* at 1092 (noting that the *voir dire* took "an arduous 10 day[s]"); (7) whether the court examined the veniremembers outside the presence of other veniremembers (although that is not *per se* necessary), *United States v. Davis*, 583 F.2d 190, 197-98 (5th Cir. 1978); (8) whether the attorneys had "the opportunity to recommend further inquiries," *Chagra*, 669 F.2d at 254;[50] and (9) whether the "judge[] himself inquired into the prospective [jurors'] exposure to publicity

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> would be discovered if present. The district court's decision will not be lightly overturned.

*Hawkins*, 658 F.2d at 283 (internal quotation marks and citations omitted); *see also Mu'Min v. Virginia*, 500 U.S. 415, 427 (1991).

[50] *See also Calley*, 519 F.2d at 209 ("[M]ore importantly, both defense counsel and the prosecution were allowed almost unlimited freedom to inquire into the court members' attitudes, perceptions, backgrounds and the nature and extent of their exposure to pretrial publicity.").

and ability to render a fair and impartial verdict," *Calley*, 519 F.2d at 209.

Finally, if "the nature of the publicity as a whole raises a significant possibility of prejudice, and a juror acknowledges some exposure to that publicity, more than the abbreviated questioning . . . is necessary," because a "juror is poorly placed to make a determination as to his own impartiality. Instead, the trial court should make this determination." *United States v. Hawkins*, 658 F.2d 279, 285 (5th Cir. Unit A Sept. 1981) (internal quotation marks omitted).

The district court here conducted an exemplary *voir dire*. After prescreening veniremembers based upon their responses to a fourteen-page questionnaire, the parties mutually agreed to excuse 119 of them.[51] The court summoned the remaining veniremembers and explained the importance of an impartial jury. The court then asked whether "any of you have doubts about your ability to conscientiously and fairly follow these very important rules." Two veniremembers indicated they could not be fair, and the court called them to the bench and individually examined them, then excused them for cause.

Before questioning individual veniremembers, the court again emphasized that the case was not about the collapse of Enron and that serving as a juror was not about looking "to right a wrong or to provide remedies for those who suffered from the collapse of Enron." The court admonished the jurors that they could not "seek vengeance against Enron's former officers because of some wrongdoing they believe Enron or its officers may have committed," and that anyone who has such an attitude cannot "be a fair and impartial juror." The court asked veniremembers whether they knew anyone involved in the case, going through a lengthy list. If a prospective juror had any connection, the court stopped and made inquiries as to the nature of the relationship. The court also warned the prospective jurors that they should not necessarily trust what they read in the newspapers.

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[51] Contrary to Skilling's argument, it is inaccurate to say that *voir dire* took only one day. We consider the extensive questionnaire in assessing the quality of *voir dire* as a whole.

After dividing the venire into subgroups, the court asked each veniremember individually about various answers in his or her questionnaire. It asked each whether he or she remembered articles or television broadcasts pertaining to the trial. The attorneys then had the opportunity to request follow-up questions, and nearly every time the court permitted the attorneys to ask questions directly.[52] The court made credibility determinations; it was thorough, requiring more than just the veniremembers' statements that he or she could be fair.

Because the court conducted a proper and thorough *voir dire*, the question is whether, notwithstanding this searching *voir dire*, the government failed to meet its burden to show that the court did not actually empanel a juror who was unconstitutionally prejudiced. *See Chagra*, 669 F.2d at 250. After examining the record, we conclude that the government has met its burden. Although Skilling goes to great lengths to argue prejudice, during *voir dire* he failed to challenge for cause all but one of the jurors who actually sat. Of the alternate jurors, Skilling challenged none, so he cannot complain on appeal.[53]

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[52] Twice the district court limited the ability of Lay's attorney to question jurors directly. Although that is technically "more than once," as Skilling characterized it, Skilling's contention is misleading. Counsel for the defendants directly asked questions of twenty-seven veniremembers.

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[53] *See Dawson v. Wal-Mart Stores*, 978 F.2d 205, 208-09 (5th Cir. 1992) ("Dawson asserts that three members of the jury panel had a close relationship with defense counsel and were therefore unable to render an impartial verdict. However, Dawson's counsel did not challenge any of the three persons for cause, nor did he use any of his peremptory challenges to strike them. The trial transcript reveals that Dawson was given a fair opportunity to question each juror on voir dire and to remove them from the venire, but that he chose to exercise his challenges on others. When the basis for challenge to a juror is timely shown, the failure to object constitutes a waiver of the right to attack the composition of the jury."); *see also Marks v. Shell Oil Co.*, 895 F.2d 1128, 1129-30 (6th Cir. 1990) ("Marks waived this ground for challenging Kenney's fitness for jury service by failing to raise it at voir dire. . . . Although Marks did challenge Kenney as a juror for cause, Marks's challenge was based on Kenney's past employment in the oil business, alleging that this past employment would bias Kenney. Marks never suggested that Kenney could not be an impartial juror because of any concerns he had over the effect that his time in jury service would have on his business. This failure cannot stem from any lack of notice to Marks of Kenney's concerns because they were discussed in full during the voir dire. Marks cannot argue on appeal facts that she was able, but chose not, to raise below."); *United States v. Petary*, 857 F.2d 458, 462 (8th Cir. 1988) ("Six next argues that the district court erred in denying his motion for change of venue because of prejudicial pretrial publicity. Six waived any objection by failing to question any juror about his or her knowledge of this case during voir dire."); *Robinson v. Monsanto Co.*, 758 F.2d 331, 335 (8th Cir. 1985) ("[T]he right to challenge a juror is waived by failure to object at the time the jury is empaneled if the basis for objection might have been discovered during voir dire."); *cf. United States v. Musquiz*, 45 F.3d 927, 931 (5th Cir. 1995) ("By with-

The only juror who sat that Skilling had challenged for cause was Juror 11, who worked with a former Enron employee who had lost 401(k) money. Juror 11, however, never spoke with that person about Enron's management, and he said he "would have no problem" telling his co-worker that the government did not prove its case, resulting in acquittal, if that were to happen at trial.

True, Juror 11 also felt that Lay was "greedy" and that CEOs "from Billy Sol Estes to T. Boone Pickens" were greedy, looking "to meet the bottom

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drawing the challenge [to a member of the venire], Gatewood waived his objection.").

Because we presume prejudice in this case, it is the government's burden to show that the district court empaneled an impartial jury. It thus could be argued that traditional waiver rules do not apply; we disagree, because the district court expressly asked Skilling whether he sought to challenge each individual veniremember, and he said he did not. The government implicitly argued that it had met its burden, and Skilling, by explicitly saying there was no challenge, agreed. If he had objected, the government would have had the opportunity to respond, and an objection would have allowed the court to correct any possible errors before expending substantial judicial resources. *Cf. United States v. Calverley*, 37 F.3d 160, 162 (5th Cir. 1994) (en banc) ("One of the most familiar procedural rubrics in the administration of justice is the rule that the failure of a litigant to assert a right in the trial court likely will result in its forfeiture.").

By agreeing with the court and government that he did not have any challenges for cause, Skilling "intentional[ly] relinquish[ed] or abandon[ed] a known right," *United States v. Olano*, 507 U.S. 725, 733 (1993) (internal quotation marks omitted), so his argument is waived. Were it otherwise, a defendant in a presumed-prejudice case could keep an ace up his or her appellate sleeve by acquiescing to jurors at trial and then arguing error on appeal.

line," that CEOs in general "walk a line that stretches sometimes the legality of something," and that "I'm not going to say that they're all crooks, but, you know . . . ."[54] But he had "no idea" whether Skilling had "crossed that line," and he "didn't say that" every CEO is probably a crook. He also asserted that he could be fair and require the government to prove its case, that he did not believe everything he read in the paper, that he did not "get into the details" of the Enron coverage, that he did not watch television, and that Enron was "old news."

Juror 11 likewise expounded upon his view that "greedy" did "not necessarily" equate to "illegal," agreeing that "greed and ambition are the same thing." He even asserted that he believed the defendants "earned their salaries," but also that some "bonuses and stuff" are "obscene" in his "opinion." He stated that CEOs "normally stretch" because "it's all a new frontier," and CEOs "try[] to satisfy their shareholders . . . ." Relatedly, he explained that he did not think he could be convinced Lay was not greedy, because "anybody that takes home the salaries and the bonuses and stuff that they have, they got to be greedy, or they wouldn't do that."

The court denied the motion to disqualify for cause, explaining, "I looked him in the eye and I've heard all his questions and the motion is denied." The court observed Juror 11's demeanor, listened to his answers, and believed he would make the government prove its case. Although Juror 11 spoke of

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[54] It is uncertain from the transcript whether he stated "you know" with the inflection of "come on, they are obviously guilty" or instead with a tone suggesting that the veniremember was searching his mind to explain what he meant.

"greed" (which he equated with ambition) and "stretch[ing]" the law, he was forthright that he had no view as to Skilling's guilt. He also evinced a healthy skepticism of the news.

The express finding that Juror 11 was fair is not reversible error, meaning that the government has met its burden of demonstrating the impartiality of the empaneled jury.[55] For the same reasons, Skilling cannot show that any juror who actually sat was prejudiced against him.[56]

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[55] In *Mayola*, 623 F.2d at 1001, we stated that the government can rebut a presumption of prejudice, but that "[o]f course, it could not be [rebutted] merely by the jurors' assurance on *voir dire* of their own impartiality"; we added that "[o]n the other hand, a showing that none of the twelve jurors impanelled had ever been exposed, first or second hand, to the inflammatory publicity, would probably suffice to negate the presumption of prejudice flowing from that publicity." *Id.* We did not suggest, however, that in all cases of presumed prejudice, the only way for the government to rebut the presumption is by showing that none of the jurors had any knowledge whatsoever of any publicity.

[56] In an attempt to avoid this result, Skilling points to a number of statements from veniremembers who were not selected as jurors. Skilling argues that the statements are relevant, because it is erroneous "to force a party to exhaust his peremptory challenges on persons who should be excused for cause." *United States v. Dozier*, 672 F.2d 531, 547 (5th Cir. 1982) (internal quotation marks omitted).

*Dozier*, however, no longer represents the law of this circuit. Although we are bound by a prior panel's decision unless the court en banc has reversed it or there has been intervening Supreme Court precedent, *see, e.g.*, *Burlington N. R.R. v. Bhd. of Maint. of Way Employees*, 961 F.2d 86, 89 (5th Cir. 1992), here there is a later Supreme Court decision. As we recognized in *Wharton*, 320 F.3d at 535, "[a] district court's erroneous refusal to grant a defendant's challenge for cause is only grounds for

In sum, although Skilling demonstrated sufficient community bias to raise a presumption of prejudice, the district court's *voir dire* more than mitigated any effects of this prejudice. The government met its burden of showing that the actual jury that convicted Skilling was impartial. Accordingly, we decline to reverse Skilling's convictions on this basis.

## VI. Prosecutorial Misconduct

Skilling contends that the government deprived him of the ability to present favorable evidence, thereby unconstitutionally abusing its prosecutorial powers. In particular, Skilling argues that the government violated his Sixth Amendment right to present witnesses on his behalf and infringed on his Fifth Amendment right to be free from governmental interference when preparing his defense.

Skilling requested interviews from hundreds of individuals involved in some way with Enron, but few agreed even to meet with him. In April 2005, he sent letters to 144 potential witnesses requesting

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reversal if the defendant establishes that the jury which actually sat to decide his guilt or innocence was not impartial." For that proposition, we cited *United States v. Martinez-Salazar*, 528 U.S. 304, 313-18 (2000), which held that "a defendant's exercise of peremptory challenges pursuant to Rule 24(b) is not denied or impaired when the defendant chooses to use a peremptory challenge to remove a juror who should have been excused for cause," *id.* at 317. Thus, the *Wharton* panel's construction of *Martinez-Salazar* is the law of the circuit. Because the only juror whom Skilling even objected to for cause was Juror 11, and because the court did not err in denying Skilling's objection to that person, we need not consider whether the court erred in denying some of Skilling's other objections for cause.

meetings, but only two accepted the invitation. In May 2005, he sent 138 more letters, but only two more agreed. The district court then sent letters to thirty-eight potential witnesses to inform them that the government would not retaliate against them if they cooperated with Skilling.[57] Even after the dis-

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[57] The district court sent a letter to counsel for a number of potential witnesses that the prosecution and defense had jointly identified, informing counsel that

> [the court has] been informed by the government that if you wish to speak with defense counsel: (i) you need not seek permission from the government or notify them about the meetings; (ii) you have the government's consent to meet with the defense to the extent such consent is required by any agreement you may have with the government; (iii) you are free to discuss whatever you choose to discuss, whether or not you have any agreement with the government limiting what information may be shared with third parties; and (iv) you are free to agree to testify on defendants' behalf at trial.

The district court concluded,

> [f]inally, if you believe it would help you decide whether to meet with defense counsel or testify on their behalf at trial, I am willing to meet with you, along with representatives of all parties, to address any concerns about speaking to the defense in this case.

In conjunction with the letters, the district court issued an order, dated May 27, 2005, to address any of the witnesses' concerns that the government would retaliate against those that cooperated with Skilling. The order provided that

> 1. All counsel in a criminal proceeding may seek to contact and interview witnesses before trial.
> 2. Whether or not a witness wishes to talk to the attorneys or representatives of ei-

trict court sent these letters, however, only one more witness came forward. Skilling asserts that prosecutorial misconduct was the catalyst for the witnesses' decisions not to assist in his defense.

The district court considered these allegations, conducted an evidentiary hearing into some of the more troubling ones, and concluded, as a factual matter, that Skilling had not proven prosecutorial misconduct. The district court found that Skilling did not demonstrate substantial interference with any witness's choice to testify and that the government did not engage in any practice that denied Skilling a fair trial. Our review of the record convinces us that the district court did not commit clear error. Moreover, the district court's letter to the potential witnesses mitigated any possible prejudice.[58]

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ther party in this case is entirely up to the witness.

3. Should a witness decide to provide information or assistance to the defense, the government will not view the witness's decision to cooperate with defense counsel as any lack of cooperation with the government, and the government will not use such cooperation as a basis for decisions regarding prosecution.

[58] Although the district court's letter mitigated the potential prejudice Skilling may have suffered, it did not necessarily render any misconduct *per se* harmless. That is, the letter is relevant to whether any misconduct was harmless, but it alone is not sufficient.

If the government's conduct is egregiously threatening, would-be witnesses may not believe that it is worth taking the chance of crossing prosecutors, regardless of what a well-meaning judge says in a letter. Such a letter, however, is circumstantial evidence that tends to reinforce the court's determination that prosecutorial misconduct did not drive the deci-

Before addressing Skilling's allegations of prosecutorial intimidation of witnesses, however, we turn briefly to Skilling's argument that "serious legal error" tainted the court's ruling based on the court's discussion of the witnesses' Fifth Amendment rights. The district court stated during a pretrial hearing that there was a "reasonable likelihood" that the witnesses did not cooperate with Skilling because the witnesses were guilty of related crimes and wished to assert their Fifth Amendment privilege to avoid incriminating themselves.[59] Although the district court did not make this statement during the witnesses' trials or in the presence of a jury, it is still troubling. In *Carter v. Kentucky*, 450 U.S. 288 (1981), the Supreme Court recognized that a witness may have many reasons, unrelated to guilt or innocence, for declining to testify:

> It is not every one who can safely venture on the witness stand though entirely innocent of the charge against him. Excessive timidity, nervousness when facing others and attempting to explain transactions of a suspicious

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sion of potential witnesses to shun the defendant. When the court sends a letter of this sort, the convicted party's burden on appeal is steeper, but it is not insurmountable.

[59] The court stated that "[t]he primary reason a person asserts a Fifth Amendment privilege is because the person is guilty of criminal conduct and wants to avoid incriminating himself by testifying," and that "[g]iven the number of people who have pleaded guilty and have been found guilty for perpetrating Enron-related crimes . . . there is a reasonable likelihood that the proposed witnesses have asserted their Fifth Amendment privilege for this reason, and not because of fear of government reprisals if they testified."

> character, and offences charged against him, will often confuse and embarrass him to such a degree as to increase rather than remove prejudices against him. It is not every one, however honest, who would, therefore, willingly be placed on the witness stand.
>
> Other reasons include the fear of impeachment by prior convictions . . . or by other damaging information not necessarily relevant to the charge being tried, and reluctance to incriminate others whom [defendants] either love or fear.

*Id.* at 300 n.15 (alteration in original) (internal quotation marks and citations omitted). Skilling fails to demonstrate reversible error, however, because he did not provide any evidence that the district court's statement was "sufficiently egregious in nature and degree so as to deprive [Skilling] of a fair trial." *See United States v. Weddell*, 800 F.2d 1404, 1411 (5th Cir. 1986).

The Supreme Court has recognized that the Constitution entitles a criminal defendant to a fair trial, not a perfect one, and has emphatically rejected automatic reversal without regard to whether the error was harmless beyond a reasonable doubt. *See United States v. Hasting*, 461 U.S. 499, 508-09 (1983). The district court's statement that witnesses may have asserted their privilege against self-incrimination due to their guilt did not result in a blanket dismissal of Skilling's arguments or a denial of his right to be heard. As discussed below, the district court still examined Skilling's proffered evidence of misconduct when deciding whether to grant an evidentiary hearing, held a hearing on the two most persuasive allegations of misconduct, and, out of an abundance of caution, issued letters to potential witnesses encouraging them to speak with the defense. These actions demonstrate that even if the district court erred in ruminating about the witnesses' invocations of their Fifth Amendment rights, that error was harmless. Accordingly, we find no evidence that the district court's statement deprived Skilling of a fair trial.

Having disposed of Skilling's argument regarding the district court's statement about the witnesses' Fifth Amendment rights, we now turn to Skilling's allegations of prosecutorial misconduct. In particular, Skilling contends that the district court improperly refused to consider various hearsay declarations and that plea agreements impermissibly restricted witnesses from cooperating with him. Skilling also makes general allegations of witness intimidation and points to specific instances where the government's alleged misconduct dissuaded witnesses from testifying.

"The Sixth Amendment guarantees a criminal defendant the right to present witnesses to establish his defense without fear of retaliation against the witness by the government," and "the Fifth Amendment protects the defendant from improper governmental interference with his defense." *United States v. Bieganowski*, 313 F.3d 264, 291 (5th Cir. 2002) (internal quotation marks and citations omitted). "[A]s a general rule, '[w]itnesses . . . to a crime are the property of neither the prosecution nor the defense. Both sides have an equal right, and should have an equal opportunity, to interview them.'" *United States v. Soape*, 169 F.3d 257, 270 (5th Cir. 1999) (quoting *Gregory v. United States*, 369 F.2d 185, 188 (D.C. Cir. 1966)) (second alteration in original). Of course, "[n]o right of a defendant is violated when a potential witness freely chooses not to talk [to defense counsel]." *In re United States*, 878 F.2d 153, 157 (5th Cir. 1989).

We have explained that to demonstrate governmental infringement on these Sixth Amendment rights, "the defendant must show that the government's conduct interfered substantially with a witness's free and unhampered choice to testify." *United States v. Thompson*, 130 F.3d 676, 686 (5th Cir. 1997) (internal quotation marks omitted). "Whether a defendant has made a showing of substantial interference is a fact question [that we review] for clear error." *Bieganowski*, 313 F.3d at 291. Violations of these rights are subject to a harmless error analysis, so we will not reverse unless "the prosecutor's conduct was sufficiently egregious in nature and degree so as to deprive [the defendant] of a fair trial." *See Weddell*, 800 F.2d at 1411.

### A. Hearsay Declarations

Skilling presented hearsay evidence that potential witnesses did not meet with him because they feared government reprisal. The district court learned of this evidence third-hand, in affidavits from Skilling's attorneys, who received the information from the witnesses' attorneys, who purportedly conveyed the views of their clients. On appeal, Skilling argues that the court erred in failing to credit the hearsay evidence in its conclusion that there was no prosecutorial misconduct, as Federal Rule of Evidence 804(b)(6) allows hearsay where the government is responsible for making a witness unavailable.[60] Because Skilling did not present this argument to the district court, we review only for plain error.[61] Therefore, we must ask whether there was error that was plain and affected Skilling's substantial rights. *United States v. Olano*, 507 U.S. 725, 732-33 (1993).

Even assuming that the district court erred, that error was not plain. Under Rule 804(b)(6), Skilling had the burden of showing that the government was responsible for the unavailability of the declarants. *See United States v. Scott*, 284 F.3d 758, 762 (7th Cir. 2002). To meet this burden, Skilling proffered the hearsay declarations that his attorneys had obtained. The district court found that these declarations did not meet Skilling's burden, except for two declarations of attorneys Wendell Odom ("Odom") and Robert Sussman ("Sussman"), who represented several witnesses who had expressed concerns about what would happen if they met with Skilling's lawyers. Based on these declarations, the district court ordered those two attorneys to appear before it to question them further. That is, the court implicitly considered all of these declarations in deciding to grant a hearing. In the end, however, the district court found that the declarations were insufficient for Skilling to meet his burden of showing that the government was responsible for the witnesses' unavailability. Skilling does not explain adequately why the district court was incorrect in this conclusion, especially given that the court did consider the declarations, and accordingly, he fails to demonstrate plain error. Further, this court has not resolved whether, to invoke Rule 804(b)(6) properly, a party must make this evidentiary showing with material independent of the hearsay itself. This is a question of first impression, and there are persuasive arguments for either position or for a hybrid of the two.[62] This question is especially difficult here given that it was the defense counsel who made the uncorroborated hearsay declarations. Under such circumstances, any error is not plain.[63]

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[60] Rule 804(b)(6) reads, "The following are not excluded by the hearsay rule if the declarant is unavailable as a witness: . . . A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness." FED. R. EVID. 804(b)(6).

[61] Skilling counters that it was obvious on the face of the declarations he presented that Rule 804(b)(6) applied, suggesting that he raised this particular argument below. The Federal Rules of Evidence, however, require a party who complains of the district court's decision to exclude evidence to show that "the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked." FED R. EVID. 103(a)(2); *see United States v. Martinez*, 486 F.3d 855, 860-61 (5th Cir. 2007) (finding that an issue was preserved when the defendant explained the issue to the district court even though the defendant made no reference to case law). Skilling never cited Rule 804(b)(6), never suggested that an exception to the hearsay requirement would allow the court to consider the declarations, and never formally moved to admit his attorneys' declarations. Thus, Skilling did not make "known to the [trial] court the action which he desire[d] the court to take or his objection to the action of the court and the grounds therefor." *United States v. Arteaga-Limones*, 529 F.2d 1183, 1198 (5th Cir. 1976) (internal quotation marks omitted) (first alteration in original). Accordingly, we must review the district court's ruling only for plain error.

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[62] We know of no Fifth Circuit precedent on this questio. In fact, only one unpublished decision, *United States v. Nelson*, 242 F. App'x 164, 170-71 (5th Cir. 2007), even addresses Rule 804(b)(6).

As noted above, the district court was particularly cautious regarding the declarations that it believed might demonstrate prosecutorial misconduct. The court held an evidentiary hearing regarding alleged threats to Sussman, a lawyer representing several former Enron employees. At the hearing, Sussman indicated that a number of factors informed his advice to his clients that they should not cooperate with Skilling. He acknowledged that the "possibility" that the government might look "unfavorably" at cooperation was one of them, but he also expressly testified that the potential for government reprisal was only one "[a]mong a number of other[]" factors impacting the decision and that there were "a variety of reasons." Of particular importance, Sussman testified that the government had made no explicit or implicit statement that his clients should not meet with defense counsel. Accordingly, the district court did not clearly err in concluding that the government had not substantially interfered with Skilling's ability to interview Sussman's clients.

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[63] Skilling also argues that the district court should have ordered a full evidentiary hearing regarding each allegation of misconduct based on these declarations. However, he has waived that argument for failure to brief it adequately. *See* FED. R. APP. P. 28(a)(9) (noting that briefs must include "contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies" and "a concise statement of the applicable standard of review"); *United States v. Lindell*, 881 F.2d 1313, 1325 (5th Cir.1989) (holding that a party waives an argument that it inadequately briefed). Instead, Skilling merely argues in his brief that, at the very least, the district court should have held an evidentiary hearing. Although he cites to several cases from outside of this circuit, he fails to provide sufficient legal argument for this court to consider his claim. Unbriefed issues include the following: When is a district court obligated to hold an evidentiary hearing? What is the standard of review? Are there any relevant Fifth Circuit cases? If the absence of these basic elements of an appellate argument constitutes waiver in typical cases, waiver applies all the more where, as here, a party is given leave to file approximately 550 pages of briefing.

Likewise, Skilling claims that the government improperly persuaded Michael Anderson ("Anderson"), another former Enron employee, not to cooperate. Prosecutors allegedly did so by having an FBI agent threaten Odom, Anderson's lawyer, warning Odom not to talk to Skilling and his lawyers because "those are bad guys." Concerned, the district court held an evidentiary hearing to question Odom.

Although Odom testified that it "might" have been a factor "that the Task Force might not [have] take[n] kindly" if Anderson cooperated, the testimony, taken as a whole, amply demonstrates that unlawful intimidation did not drive Anderson's decision not to meet with Skilling. Odom, for instance—aside from not definitively stating that such a concern was even a factor at all—testified that "[t]here [were] many factors" that he considered in advising his client and that he did not know whether the "bad guys" statement referred to the defendants or to their lawyers. He also had no additional firsthand information about any prosecutorial threats. This evidence supports the district court's express finding that the government did not substantially interfere with Skilling's ability to interview Anderson.

### B. Plea Agreements

Skilling asserts that the government's plea agreements with Merrill Lynch and Canadian Imperial Bank of Commerce ("CIBC") improperly forbade witnesses from cooperating with his defense. He claims that the agreements prohibited witness testimony from any employee who would contradict the terms of the agreement, that the agreements prohibited meetings between the defense and witnesses out of the presence of the prosecution, and that the agreements did not permit information-sharing between the defense and employees of Merrill Lynch or CIBC. None of these alleged errors require reversal.

Assuming, *arguendo*, that the plea agreements created some ambiguity, leading potential witnesses to conclude that the plea agreements forbade their cooperation with the defense, the district court's letter to the witnesses clarified the government's position and eliminated any potential confusion or misunderstanding.[64] The district court stated that the witnesses—even those subject to a plea agreement—were free to testify on Skilling's behalf at trial. Thus, although the *corporations* could not take a position contrary to the plea agreement, their *employees*, acting in their personal capacities, were free to testify for the defense. The district court also notified potential witnesses that they did not need to seek permission from the government or notify it of meetings with Skilling or his lawyers, and that the district court's letter conveyed the government's consent for the witnesses to meet with the defense to the extent that any plea agreements required such consent.

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[64] As is common with plea agreements, the government retained "sole discretion" to determine whether the agreements were breached. The district court's letter informed potential witnesses that the letter was consistent with the government's position.

Finally, the district court clarified that the potential witnesses were not limited in what information they shared with the defense. Accordingly, Skilling failed to provide any evidence that the plea agreements were "sufficiently egregious in nature and degree so as to deprive [Skilling] of a fair trial," especially given the manner in which the district court interpreted and clarified the plea agreements. *See Weddell*, 800 F.2d at 1411.

Skilling also argues that some potential witnesses entered into plea agreements that forbade them *from* speaking about what they learned from the government, which these would-be witnesses misconstrued as limits on talking about any topic they discussed *with* the government. Skilling reasons that this confusion evinces unlawful governmental interference. However, the district court's letter mitigated any misunderstanding regarding the contours of the plea agreements. The district court's action was sufficient to allay any concern, especially given that the most natural reading of the agreements is that they restricted only divulging information learned from the government and did not ban talking with Skilling altogether.[65] Thus, the district court did not err in finding that the plea agreements themselves did not substantially interfere with the witnesses' decisions not to speak with the defense, and the district court's letter was sufficient to mitigate any misunderstanding about the plea agreements such that any remaining influence was harmless. *See id.* at 1410-11 (defining the harmless error standard).

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[65] In the district court, Skilling also argued that it was illegal for the government to require those who entered into an agreement with the government to agree not to reveal what they learned *from* the government. Because Skilling did not raise this issue adequately on appeal, however, we cannot consider it. Skilling's cursory argument and references to pleadings in the district court do not preserve the issue. *See* FED. R. APP.P.28(a)(9); *Lindell*, 881 F.2d at 1325.

### C. General Allegations of Witness Intimidation

Skilling's next argument is that the government created "a pervasive atmosphere of fear for all witnesses associated with Enron by publicly touting a perpetually 'ongoing' grand jury investigation and maintaining a 100-plus person co-conspirator list." Skilling cites *United States v. Peter Kiewit Sons' Co.*, 655 F. Supp. 73 (D. Colo.), *aff'd sub nom. United States v. Carrigan*, 804 F.2d 599 (10th Cir. 1986), for support. In *Peter Kiewit*, "witnesses got the clear mental impression . . . that the prosecutors preferred that these witnesses not talk to defense representatives," and the court ordered the witnesses to submit to depositions by the defense. *Id.* at 77-78. That case is distinguishable for multiple reasons, the most obvious being the party that prevailed in the district court. There, the district court considered the proffered evidence and found misconduct, *id.* at 75-78; the appellate court reviewed that finding for clear error in the defendant's favor, *Carrigan*, 804 F.2d at 604.[66] Here, the district court found no misconduct, and that finding is also entitled to clear error review, but this time in the government's favor.

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[66] Although *Carrigan* involved a petition for a writ of mandamus, meaning that the court reviewed the district court's order for a clear abuse of discretion, *see* 804 F.2d at 602, the court expressly stated that it "[could not] say that the [district] court's findings of fact are clearly erroneous," *id.* at 604.

The district court determined that the best way to counter any concerns about government retribution was for the court to address those concerns directly through letters to the potential witnesses. As discussed above, these letters informed potential witnesses that they could cooperate with Skilling without reprisal from the government and that the witnesses could speak with the court if they remained concerned. That is more than sufficient, especially given the court's finding that there was no credible evidence of actual unlawful intimidation.

Moreover, the government is always entitled to investigate and punish criminal conduct. *See United States v. Viera*, 839 F.2d 1113, 1115 (5th Cir. 1988) (en banc). Nothing in the record indicates that the government extended or enlarged its ongoing investigation to intimidate witnesses. The government obviously could not use its prosecutorial power to intimidate potential witnesses into refusing to consult with Skilling, *See United States v. Dupre*, 117 F.3d 810, 823 (5th Cir. 1997), or to badger them into silence by meritless perjury threats, *see Viera*, 839 F.2d at 1115, but there is nothing in the record to suggest that Skilling did not receive a fair trial because of government intimidation.

Skilling further argues that the fact that so many people chose not to cooperate with the defense means that the government must have done something nefarious, because "the proof was in the pudding." However, Skilling fails to present any direct evidence of witness intimidation. Thus, *United States v. Hammond*, 598 F.2d 1008, 1012 (5th Cir. 1979), which Skilling cites, is not on point, because there the defendant presented direct evidence of witness intimidation. In that case, an FBI agent actually approached a defense witness and threatened him with "nothing but trouble" in a different proceeding if he "continued on" in the defendant's trial. *Id.* By contrast, here there is no direct evidence of witness intimidation. *Hammond* does not require this court to find an *inference* of intimidation arising from the lack of cooperating witnesses, so the mere fact that many witnesses chose not to cooperate with Skilling does not prove substantial interference with the witnesses' free and unhampered choice to testify. *See id.* at 1013.

### D. Specific Allegations of Witness Intimidation

In addition to the general challenges discussed above, Skilling offers specific evidence relating to several witnesses. He alleges that the government contacted these witnesses and implicitly suggested retaliation if they cooperated with Skilling's defense.

For example, Skilling points to an email that the government sent to a lawyer for Rice, a former CEO of EBS who refused to speak to Skilling. Skilling contends that Andrew Weissmann ("Weissmann"), a top prosecutor, emailed one of Rice's attorneys, informing him that another of Rice's attorneys, Dan Cogdell ("Cogdell"), an experienced defense attorney, was communicating with Skilling's attorneys. Weissman suggested that if Cogdell was acting against Rice's interest, Rice should "get[] rid of him."

The government responds that it sent the email because of a potential conflict of interest between Cogdell and Rice, given that Cogdell represented a number of Enron-related defendants with arguably divergent interests. Weissmann offered the court a declaration to that effect, saying that in his "experience as a prosecutor, it is unusual for one lawyer to represent multiple targets in an investigation while also representing a cooperating witness." Skilling argues that this explanation is merely pretext for an unconstitutional threat and that there was no good reason to worry about Cogdell's representation. Another of Rice's attorneys filed a declaration saying that the government's communications played no part in Rice's decision not to meet with Skilling.

Given the statement from Rice's lawyer that the email did not affect Rice's decision on whether to cooperate with the defense, we cannot conclude that the email was an improper threat. Even if it was in fact a threat, it was sufficiently ambiguous that we cannot say confidently that its real purpose was intimidation as opposed to something more benign.[67] Under clear error review, we do not second-guess the district court's factual finding in these ambiguous circumstances.

Skilling also contends that the government threatened Tim Belden ("Belden"), another former high-level Enron employee, with reprisal if he spoke with Skilling, even going so far as telling him to take the Fifth Amendment if called to testify. The evidence Skilling offered, however, was merely a statement from one of Skilling's attorneys that supposedly represented what one of Belden's attorneys had said. As explained above, the court did not err in failing to credit those hearsay declarations. Moreover, Belden's attorney expressly denied to the court that the government had threatened Belden. All of this, in conjunction with the court's order and letter to the witnesses, is sufficient to show that the court's finding of no prosecutorial misconduct was not clearly erroneous.[68]

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[67] Weissmann would have done well to have brought the issue to the court's attention instead of emailing Rice's lawyer.

Skilling further contends that the government made "veiled threats" to the lawyer for Mark Palmer ("Palmer"), a former Enron spokesperson. Palmer's lawyer declared that an FBI agent contacted him before Palmer's testimony in another Enron-related trial, saying it was "not in [Palmer's] best interest" to testify for the defense, because one of the defendants might try to shift the blame onto him. As the government observed, however, Palmer testified at the other trial, suggesting that the government's intimidating misconduct—if it were in fact misconduct—did not interfere substantially with Palmer's free and unhampered choice to testify. *See Thompson*, 130 F.3d at 687 (suggesting that a witness's decision to testify, after a warning from FBI agents that he could be arrested and jailed for perjury if he did not tell the truth, indicated that the FBI's statements did not deter the witness from testifying). Moreover, because the evidence of alleged misconduct occurred in a separate trial, an additional inference is necessary to tie any governmental interference in that case to this one: namely, that if the government interfered there, it also must have done so here. In light of the paucity of more definite evidence, there is no clear error.[69]

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[68] Skilling contends that additional evidence in the supplemental record shows that the government ordered Belden not to contact any of his former colleagues. Skilling offers as evidence an email in which Belden's attorney asked for permission for Belden to send Christmas cards. Skilling did not present that evidence to the district court, and "[i]t is our well-settled rule that 'issues raised for the first time on appeal are not reviewable by this court unless they involve purely legal questions and failure to consider them would result in manifest injustice.'" *Diaz v. Collins*, 114 F.3d 69, 71 n.5 (5th Cir. 1997) (quoting *Varnado v. Lynaugh*, 920 F.2d 320, 321 (5th Cir. 1991)). Because the issues surrounding the email involve questions of both law and fact, we cannot review this particular argument.

Skilling also avers that a voicemail transcript of a phone call from Weissmann to the lawyer for David Duncan, an Arthur Andersen partner, suggests prosecutorial abuse. Again, Skilling failed to present that transcript to the district court, and for the same reasons, we cannot address it.

Similarly, Skilling argues that the government, in another Enron-related trial, changed the status of former Arthur Andersen employee Kate Agnew ("Agnew") from "witness" to "subject" and threatened her with perjury, thus causing her not to testify. Skilling apparently learned of this threat from one of Agnew's former attorneys. One of her current attorneys, however, filed a declaration stating that the former attorney's allegations were not true, that "Ms. Agnew does not want to meet with or be interviewed by [Skilling's] counsel," and that her decision was "not based on any concern or fear regarding possible prosecutorial intimidation or retaliation." If the government's actions did not interfere substantially with Agnew's decision not to testify, then there is no violation of Skilling's right to a fair trial. *Cf. id.* (noting that the defendant "failed to make the necessary showing that the government's actions interfered substantially with [the witness's] free and unhampered choice to testify" (internal quotation marks omitted)). The district court's finding as to Agnew is not clearly erroneous.

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[69] Skilling also points to evidence suggesting that the government called Larry Ciscon's lawyer three times in the two weeks leading up to his scheduled testimony in another Enron-related case to reiterate that he was still a "target." Skilling contends that this shows that governmental interference was responsible for Ciscon's choice not to cooperate with Skilling. Skilling also argues that the government told Rex Shelby that it would not be a "good idea" to speak with the attorneys for Joe Hirko (a co-CEO of EBS) in another related case. These claims are similar to the one involving Palmer and have the same result. Moreover, for both Ciscon and Shelby, as with Belden, Skilling did not even ask the court to send its letter urging witnesses to cooperate and not to fear retribution.

In sum, the district court did not clearly err in finding that Skilling failed to show that any governmental misconduct interfered substantially with his ability to communicate with potential witnesses or otherwise to present his defense.

## VII. Suppression of Exculpatory Evidence

Under *Brady v. Maryland*, 373 U.S. 83 (1963), the government may not withhold evidence that is favorable to a criminal defendant. *United States v. Walters*, 351 F.3d 159, 169 (5th Cir. 2003). Skilling asserts that the government violated *Brady* in three ways. First, he alleges that the government withheld material information regarding Fastow's plea agreement. Second, Skilling contends that the government's use of an open file to satisfy its *Brady* disclosure obligation was legally insufficient. Third, Skilling alleges that the government provided him with summaries of FBI interviews with Fastow that did not accurately reflect what Fastow had told government investigators. Having reviewed the record, we find no *Brady* violations.

To establish a *Brady* violation, a defendant must show that (1) the prosecution suppressed evidence; (2) the evidence was favorable, such as exculpatory or impeachment evidence; and (3) the evidence was material. *See Mahler v. Kaylo*, 537 F.3d 494, 499-500 (5th Cir. 2008). Moreover, a defendant must establish that his or her failure to discover the evidence was not the result of a lack of due diligence.[70] *See United States v. Mulderig*, 120 F.3d 534, 541 (5th Cir. 1997); *United States v. Marrero*, 904 F.2d 251, 261 (5th Cir. 1990). Where a defendant fails to establish any one element of *Brady*, we need not inquire into the other components. *See United States v. Runyan*, 290 F.3d 223, 245 (5th Cir. 2002); *United States v. Hughes*, 230 F.3d 815, 819 (5th Cir. 2000).

Of the *Brady* components, materiality "is generally the most difficult to prove." *Mahler*, 537 F.3d at 500. In assessing materiality, we must determine "whether 'the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.'" *United States v. Sipe*, 388 F.3d 471, 478 (5th Cir. 2004) (quoting *Strikler v. Greene*, 527 U.S. 263, 290 (1999)). As this court has summarized the materiality inquiry,

> [t]he Supreme Court has imposed four criteria for determining whether evidence is material. First, materiality does not require the defendant to demonstrate by a preponderance of the evidence that omitted evidence would have

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[70] Some of our cases have treated this "due diligence" requirement as a fourth element of a *Brady* claim. *See, e.g., Walters*, 351 F.3d at 169.

> resulted in acquittal. Second, he need not weigh the withheld evidence against the disclosed evidence to show he would have been acquitted by the resulting totality. Third, if evidence is found material, there is no need to conduct a harmless error analysis. Fourth, the withheld evidence should be considered as a whole, not item-by-item.

*DiLosa v. Cain*, 279 F.3d 259, 263 (5th Cir. 2002) (citing *Kyles v. Whitley*, 514 U.S. 419, 434-37 (1995)). We concluded that "[t]he sum of these four guideposts means that to show a due process violation when the state withholds evidence, a defendant need not prove that his trial necessarily would have had a different outcome; a lack of faith in the result is sufficient." *Id.* Additionally, materiality depends largely on the value of the suppressed evidence relative to evidence that the government disclosed. *Sipe*, 388 F.3d at 478.

We review *Brady* questions de novo. *See, e.g.*, *Runyan*, 290 F.3d at 245; *Hughes*, 230 F.3d at 819. As a preliminary matter, we note that Skilling has alleged several *Brady* violations that are not properly before this court. Skilling never raised these claims to the district court, and some of his arguments rely on evidence that was never before the district court. As we noted in *United States v. Gonzales*, 436 F.3d 560, 580 (5th Cir. 2006), "*Brady* challenges present fact-based judgments that cannot be adequately first made on appellate review. That is why *Brady* challenges must be brought to the district court's attention, winnowed by the trial judge, and made part of the record through a motion for new trial." That is, the proper avenue for a defendant to raise claims such as these would be a motion for a new trial under Federal Rule of Criminal Procedure 33. Thus, as we note throughout, we will not address Skilling's claims that he did not sufficiently bring to the district court.

### A. Fastow's Plea Agreement

In his plea agreement, Fastow agreed to a sentence of ten years, and the government promised not to make any motion for a reduction in sentence. At trial, the government bolstered Fastow's credibility by emphasizing that he had no reason to lie because he would be spending ten years—and no less—in prison. After Skilling's conviction, however, a judge sentenced Fastow to approximately six years. Based on the disparity between the amount of time the government told the jury Fastow would serve and Fastow's actual sentence, Skilling alleges two distinct but related *Brady* violations: (1) that the government improperly bolstered Fastow's trial testimony and (2) that the government and Fastow had an undisclosed side deal regarding Fastow's testimony.

Skilling did not raise his first claim in the district court. As Skilling presents this claim as a *Brady* violation, we cannot address it for the first time on appeal. *See Gonzales*, 436 F.3d at 580. Even if we could, Skilling's argument is conceptually flawed. He essentially argues that the government suppressed the fact that Fastow's sentence was not irrevocably and inevitably fixed at ten years. Skilling's argument cannot proceed past step one, however, because there was nothing that the government suppressed. Skilling knew, or at least should have known, that a sentencing court could reduce Fastow's sentence pursuant to *United States v. Booker*, 543 U.S. 220 (2005). We do not dispute Skilling's assertion that the government "had to know" that Fastow's sentence could possibly be less than ten years. Yet Skilling also had to know this, and thus the government did not suppress anything. *See Runyan*, 290 F.3d at 246 ("Evidence is not 'suppressed' if the defendant knows or should know of the essential facts that would enable him to take advantage of it." (internal quotation marks omitted)); *United States v. Dixon*, 132 F.3d 192, 199 (5th Cir. 1997) ("*Brady* does not obligate the government to produce for a defendant evidence or information already known to him, or that he could have obtained from other sources by exercising reasonable diligence." (alteration and internal quotation marks omitted)); *United States v. Brown*, 628 F.2d 471, 473 (5th Cir. 1980) ("In no way can information known and available to the defendant be said to have been suppressed by the Government."). With such knowledge, Skilling could have objected if he felt that the government's characterization of Fastow's plea agreement was inaccurate, or he could have raised this issue on cross-examination.

Skilling's second claim is not properly before this court because the district court never considered any evidence of an undisclosed side deal for accuracy or materiality.[71] A Rule 33 motion for a new trial would be the proper avenue for a defendant to bring this type of claim.

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[71] Skilling contends that he raised this issue in the district court. The only reference he provides for this assertion, however, is a brief mention of Fastow's sentencing in his petition for bail pending appeal. This is insufficient. Skilling did not squarely raise the issue of this *Brady* claim or move to reopen the verdict. He did not request an evidentiary hearing and

Because the government did not suppress any information regarding Fastow's sentence, we need not address its materiality.

## B. Use of an Open File

Skilling next asserts that the government's use of an open file failed to satisfy its *Brady* obligation to disclose material evidence. Skilling contends that the government's open file, which consisted of several hundred million pages of documents, "resulted in the effective concealment of a huge quantity of exculpatory evidence." As the government never directed Skilling to a single *Brady* document contained in the open file, Skilling argues that the government suppressed evidence in violation of *Brady*.

As a general rule, the government is under no duty to direct a defendant to exculpatory evidence within a larger mass of disclosed evidence. *See United States v. Mulderig*, 120 F.3d 534, 541 (5th Cir. 1997); *United States v. Mmahat*, 106 F.3d 89, 94 (5th Cir. 1997) ("[T]here is no authority for the proposition that the government's *Brady* obligations require it to point the defense to specific documents within a larger mass of material that it has already turned

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never referenced any legal authority. Skilling never called upon the district court to decide whether the government had violated *Brady*, and consequently, he never properly raised the issue in the district court. *Cf. United States v. Cohen*, 60 F.3d 460, 462 (8th Cir.1995) (holding that the defendant did not preserve a claim for a breach of a plea agreement where the defendant referenced the alleged breach in his motion for release on bail pending appeal but the district court never ruled on the claim).

over."), *overruled in part on other grounds by United States v. Estate of Parsons*, 367 F.3d 409 (5th Cir. 2004) (en banc); *Marrero*, 904 F.2d at 261 ("While the Supreme Court in *Brady* held that the government may not properly conceal exculpatory evidence from a defendant, it does not place any burden upon the Government to conduct a defendant's investigation or assist in the presentation of the defense's case."); *see also Runyan*, 290 F.3d at 246 ("The government is not required . . . to facilitate the compilation of exculpatory material that, with some industry, defense counsel could marshal on their own." (internal quotation marks omitted)). Further, where potentially exculpatory information is available to the defendant through an exercise of due diligence, there is no suppression for the purposes of *Brady*. *See Kutzner v. Cockrell*, 303 F.3d 333, 336 (5th Cir. 2002) ("When evidence is equally available to both the defense and the prosecution, the defendant must bear the responsibility of failing to conduct a diligent investigation."); *Brown*, 628 F.2d at 473 ("[W]hen information is fully available to a defendant at the time of trial and his only reason for not obtaining and presenting the evidence to the Court is his lack of reasonable diligence, the defendant has no *Brady* claim.").

Skilling argues, however, that the voluminosity of the government's open file prevented him from effectively reviewing the government's disclosure. He asserts that no amount of diligence, much less reasonable diligence, could have accomplished this task. In Skilling's words, "it would have taken scores of attorneys, working *around-the-clock* for several *years* to complete the job." Ultimately, Skilling argues that the government's production of the voluminous open file, as a matter of law, suppressed exculpatory evidence.

There is little case law on whether a voluminous open file can itself violate *Brady*, and the outcomes of these cases seem to turn on what the government does in addition to allowing access to a voluminous open file. *See, e.g., United States v. Ferguson*, 478 F. Supp. 2d 220, 241-42 (D. Conn. 2007); *United States v. Hsia*, 24 F. Supp. 2d 14, 29-30 (D.D.C. 1998); *Emmett v. Ricketts*, 397 F. Supp. 1025, 1043 (N.D. Ga. 1975). In the present case, the government did much more than drop several hundred million pages on Skilling's doorstep. The open file was electronic and searchable. The government produced a set of "hot documents" that it thought were important to its case or were potentially relevant to Skilling's defense. The government created indices to these and other documents. The government also provided Skilling with access to various databases concerning prior Enron litigation. Skilling contends that the government should have scoured the open file in search of exculpatory information to provide to him. Yet the government was in no better position to locate any potentially exculpatory evidence than was Skilling.

Additionally, there is no evidence that the government found something exculpatory but hid it in the open file with the hope that Skilling would never find it. Skilling simply makes an unsupported assertion of improper conduct on the part of the government, but he fails to provide sufficient evidence to even hint at such deceit. If there is something exculpatory still in the open file, we must assume—as there is no compelling evidence to the contrary—that the government does not know about it either.

We do not hold that the use of a voluminous open file can never violate *Brady*. For instance, evidence that the government "padded" an open file with pointless or superfluous information to frustrate a defendant's review of the file might raise serious *Brady* issues. Creating a voluminous file that is unduly onerous to access might raise similar concerns. And it should go without saying that the government may not hide *Brady* material of which it is actually aware in a huge open file in the hope that the defendant will never find it. These scenarios would indicate that the government was acting in bad faith in performing its obligations under *Brady*. But considering the additional steps the government took beyond merely providing Skilling with the open file, the equal access that Skilling and the government had to the open file, the complexity of Skilling's case, and the absence of evidence that the government used the open file to hide potentially exculpatory evidence or otherwise acted in bad faith, we hold that the government's use of the open file did not violate *Brady*.

### C. Accuracy of the 302s

During its investigation, the government conducted several hundred hours of interviews with Enron's CFO, Andrew Fastow. Government agents took almost 420 pages of handwritten notes during these interviews (the "interview notes"). From these notes, the government compiled two FBI Form 302s—one in December 2003 and another in January 2005—that summarized the substance of the interview notes. Each 302 covered multiple interviews.

The government provided the 302s to Skilling but refused to disclose the interview notes at that time. The government also refused to provide Skilling with draft versions of the 302s, asserting that they had been destroyed.[72]

The district court refused Skilling's repeated entreaties that the government disclose the interview notes but eventually ordered the government to produce the interview notes for the court to review *in camera*. As the district court noted, one of the purposes of the *in camera* review was to determine whether the interview notes contained any *Brady* material. The district court ordered the government to assemble the interview notes into binders (the "Fastow Binders"), indexed by Fastow's trial testimony and cross-referenced to the relevant portions of the 302s and interview notes. The district court intended to review the interview notes throughout Fastow's testimony and planned to give Skilling access to the notes only if Fastow denied a statement attributed to him in the 302s and the notes differed from the 302s. The government provided the district court with the Fastow Binders, but omitted some pages that are at issue in this appeal.[73] The district court never allowed Skilling to access the Fastow Binders throughout Fastow's testimony and later returned them to the government.

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[72] Skilling contends that the destruction of the draft 302s violated *Brady*. We need not address this issue at length, for even if the government unlawfully destroyed draft 302s, the government has now provided Skilling with the interview notes. Because the draft 302s are merely an intermediary step between what Fastow said—recorded in the raw notes—and what the government reported Fastow as saying—recorded in the 302s—any destruction of the draft 302s is immaterial for purposes of *Brady*.

[73] The parties dispute whether the government acted in bad faith in not disclosing all of the interview notes. Because the

While Skilling's appeal was pending, this court ordered the government to turn over the interview notes in their entirety. Upon reviewing the notes, Skilling contended that they contained exculpatory and impeachment evidence that the government was required to disclose under *Brady*. This court allowed Skilling and the government to submit supplemental briefing on these issues. At oral argument, we expressed some hesitancy to addressing the *Brady* issues involving the notes. We suggested that perhaps a motion for a new trial under Rule 33 was a more appropriate forum for these claims, as there was no explicit ruling on these issues in the district court, and some of the interview notes were not included in the Fastow Binders. At the urging of both Skilling and the government, however, we have reluctantly conducted a review of the interview notes that the government originally included in the Fastow Binders. Finding no clear error on the part of the district court, we hold that the government did not violate *Brady* in refusing to disclose the interview notes.

At oral argument, Skilling suggested that this court could review the interview notes de novo. Skilling is mistaken. Granted, this court normally reviews *Brady* claims de novo. *See Runyan*, 290 F.3d

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district court was never aware of the undisclosed notes, it had no opportunity to address whether the nondisclosure was in bad faith. Just as we are not addressing the undisclosed notes, we will not address whether the government acted in bad faith in not disclosing them. Again, the proper avenue for such an argument would be a motion for a new trial under Rule 33.

at 245. As the government pointed out, however, we apply a different standard when *Brady* claims come to us under the somewhat unique procedural posture of the present case. Where a district court has reviewed potential *Brady* material *in camera* and ruled that the material was not discoverable, we review the district court's decision only for clear error. *See United States v. Holley*, 23 F.3d 902, 914 (5th Cir. 1994) ("Here, the district court examined the relevant FBI reports and found that they did not contain discoverable material. We recognize that in situations such as this, much deference should be paid to the trial judge who observed the hours and days of testimony. After reviewing the record and considering Holley's speculation that the FBI reports could have been useful in the cross-examination of several witnesses, we find nothing which leads us to conclude that the district court's conclusion is clearly erroneous.").[74]

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[74] *See e.g., United States v. Williams*, 998 F.2d 258, 269 (5th Cir. 1993) ("After an *in camera* review, the district court concluded that nothing in the Forms 302 would tend to exculpate the defendant, reduce his sentence, or assist him in impeaching a government witness. We find nothing in the record which would cause us to believe that the district court's conclusions were clearly erroneous."); *United States v. Mora*, 994 F.2d 1129, 1139 (5th Cir. 1993) (affirming a district court's determination that notes were not discoverable under *Brady* on a finding of no clear error where the government was "[u]ncertain whether [a DEA agent's]notes were exculpatory or of impeachment value," and thus "submitted them to the district court for *in camera* inspection"); *Brown*, 628 F.2d at 472 (reviewing the district court's decision for clear error after the court had remanded the case for an *in camera* determination of whether an IRS investigative file included exculpatory evidence); *see also United States v. Trevino*, 89 F.3d 187, 190 (4th Cir. 1996) (reviewing a district court's decision that privileged or confidential material

The government provided the district court with the Fastow Binders, which contained almost all of the interview notes in question. After Fastow had finished testifying, the district court returned the Fastow Binders to the government, stating, "I don't think [the defense] is going to need them." This indicates that the district court found, albeit implicitly, no *Brady* material in the Fastow Binders. *Cf. United States v. Lampazianie*, 251 F.3d 519, 526 (5th Cir. 2001) (suggesting that a district court's evaluation of sealed evidence coupled with a later decision that the evidence remain sealed raised a "reasonable inference that the district court . . . found nothing exculpatory in the relevant documents"). Because the district court reviewed most of the interview notes and found no *Brady* material, we review the district court's decision regarding those notes for clear error.

Although clear error is the appropriate standard of review, we cannot review Skilling's remaining

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did not need to be disclosed under *Brady* and stating that "[t]he trial court's ultimate conclusion as to whether the information is subject to disclosure—whether the evidence is both material and favorable—may be disturbed on appeal only if it is clearly erroneous" (citing *Mora*, 994 F.2d at 1139)); *United States v. Monroe*, 943 F.2d 1007, 1012 (9th Cir. 1991) ("In general, a district court's ruling on the prosecution's duty to produce evidence under *Brady* is reviewed de novo. When, however, a district court rules on whether a defendant should have access to particular information in a government document that has been produced pursuant to *Brady*, we review for clear error." (citations omitted)); *United States v. Strifler*, 851 F.2d 1197, 1202 (9th Cir. 1988) ("We adopt the rule that we will reverse for denial of *Brady* material from a probation file if, on review of the file, we find that the district court committed clear error in failing to release probative, relevant, material information.").

*Brady* claims involving the notes that the government did not provide to the district court. For whatever reason, the government did not submit all of the interview notes to the district court, and the district court never had a chance to review these excluded notes for *Brady* material. As mentioned above, we cannot address an alleged *Brady* violation for the first time on appeal. The proper avenue for Skilling to raise his claims regarding the notes that were not in the original Fastow Binders would be a Rule 33 motion for a new trial.

The government provided Skilling with 302s summarizing the contents of the interview notes. As noted above, materiality often depends on the value of the suppressed evidence relative to the disclosed evidence; where suppressed evidence is merely cumulative, no *Brady* violation occurs. *Sipe*, 388 F.3d at 478 (citing *Spence v. Johnson*, 80 F.3d 989, 995 (5th Cir. 1996)). In Skilling's case, this means that there was no *Brady* violation if the information in the 302s is duplicative of that in the interview notes. As we must analyze the materiality of any suppressed, exculpatory evidence cumulatively, we save our materiality discussion until after we have addressed each alleged suppression.

Finally, throughout this section we quote extensively from Skilling's brief, the 302s, and the interview notes. Unless otherwise noted, all alterations, omissions, emphases, and errors are as they appear in these documents. In particular, we have endeavored to present the handwritten interview notes as accurately as possible and have noted when words are illegible.

### 1. Global Galactic

Skilling first claims that the 302s omitted one of Fastow's statements in the interview notes relating to the Global Galactic document. As we mentioned earlier, Global Galactic was Fastow's handwritten list that memorialized the otherwise undocumented side deals between LJM and Enron. In preparation for a meeting with Skilling, Fastow compiled a list of talking points that included the confirmation of Global Galactic. At trial, the government used this talking points list to argue that Skilling was aware of the side deals described in Global Galactic. Fastow testified that he recalled discussing the talking points list with Skilling "pretty completely," and the government introduced the talking points list to credit this testimony.

The interview notes, however, contain a statement from Fastow that he "doesn't think [he] discussed list w/JS."[75] (alteration added). The 302s contain no mention of this statement. This statement, Skilling argues, was valuable impeachment material that the government suppressed in violation of *Brady*. Skilling also asserts that this statement corroborated his testimony that he did not discuss Global Galactic with Fastow and suggests that the government knowingly presented false testimony. The government responds that the statement is of little impeachment value and was omitted from the Fastow Binders because Fastow made this statement while discussing Enron Wind, a subject unrelated to the trial.

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[75] It is unclear whether the "list" spoken of refers to Global Galactic or the talking points list.

We find the omission of this statement from the 302s troubling. Perhaps even more troubling is that the government never disclosed the page of interview notes containing this statement to the district court. However, because the district court never had the opportunity to consider this page of interview notes, we cannot address this *Brady* claim for the first time on appeal. The district court did not assess the materiality of this statement or determine whether its suppression violated *Brady*. Thus, there is nothing for us to review. Skilling must bring this claim to the district court before we can address it.

### 2. The Raptors

As we described above, the Raptors were structured finance vehicles that Enron used to hedge its investments and transfer underperforming assets off of its books. Enron enlisted the Fastow-run LJM, an "independent" third party, to own a portion of the Raptors. The government alleged that a secret side deal, or "quid pro quo," existed between Enron and LJM, meaning that LJM was not an independent third party because its equity was never at risk. Under this quid pro quo, Enron guaranteed LJM that it would recoup its $30 million dollar investment in the Raptors plus $11 million dollars in profit (the quid) and, in return, LJM would let Enron hedge any asset at any price without performing due diligence (the quo). The documents creating the Raptors did not include this secret side deal.

Skilling argues that the government suppressed exculpatory statements that Fastow made regarding the Raptors and posits that Fastow's trial testimony was inconsistent with a number of pages in the interview notes. The government responds that Skilling misunderstands the notes, and we agree.

### a. Whether Arthur Andersen Knew About the Quid Pro Quo

The government asserted that Skilling and Enron hid the quid pro quo from Arthur Andersen. As part of his reliance defense, however, Skilling claimed that Arthur Andersen was fully informed about and approved the transactions involving the Raptors. At trial, Fastow testified that Arthur Andersen had "checked off on" every aspect of the Raptors except the quid pro quo. This testimony is consistent with the 302s, which indicate that "Fastow believe[d] Enron showed AA the entire deal except for the quid pro quo," (alteration added), and that "Fastow never thought it could have been a problem for AA." Skilling asserts that Fastow's statements in the interview notes are inconsistent with this testimony. In so doing, Skilling either misunderstands or misrepresents the notes.

Skilling points to five statements in particular that he alleges demonstrate Arthur Andersen's knowledge and approval of the quid pro quo. Skilling first asserts that the government improperly withheld the following statement, as he presents it (with his own emphasis) in his supplemental brief:

> *They [Rick Causey's group and the many other people working on Raptors] didn't think that QPQ was wrong – Didn't think should be hiding this.*

Skilling characterizes "They" as including "many other people working on the Raptors," and implies that this group included Arthur Andersen. Thus, according to Skilling, this note is contrary to the 302s and Fastow's testimony.

Skilling misrepresents this statement. The context of the interview notes indicates that "They" referred to Enron employees, not to Arthur Andersen auditors. Indeed, the sentence just preceding this statement indicates that the statement only referred to members of Rick Causey's group:

> Don't know who else in RC's group knew, But deal not a secret. They didn't think that QPQ was wrong. – Didn't think should be hiding this.

This statement does not indicate that Arthur Andersen knew of the quid pro quo. Further, the 302s relate the information that members of Causey's group knew about the quid pro quo. Thus, this statement in the interview notes was consistent with the 302s.

Skilling also asserts that the government improperly withheld the following statement from the interview notes, which we copy exactly as it appears in Skilling's supplemental brief:

> Every lawyer involved understood this [quid pro quo]. *Not a secret. Never on ASF's mind that hidden from AA.*

Again, as the government points out, Skilling misrepresents the interview notes. The interview notes do not indicate that every lawyer involved knew of the quid pro quo, as Skilling's alteration suggests. This statement appears under the heading, "Who knew there was no business purpose to $41 Mil put," referring to the $41 million dollars that Enron guaranteed LJM. In the statement, "Every lawyer involved understood this," "this" refers to the lack of a business purpose. The lack of a business purpose was "Not a secret." Moreover, it was "Never on ASF's mind that [the lack of a business purpose was] hidden from AA." (alteration added). The government included this information in the 302s, which stated,

> Mike Edsall and every other lawyer involved in fashioning the Raptors understood that there was no business purpose for the $41 million put. It was never a secret and Fastow never thought it could have been a problem for AA.

Thus, the government did not suppress any exculpatory information by refusing to disclose this statement in the interview notes.

Third, Skilling asserts error in the government's refusal to disclose the following statements from the interview notes, again copied exactly as Skilling presents them in his supplemental brief:

> QPQ – discussed w/ RC [Causey] + BG [Glisan]. (1) *not a secret.* No reason not to discuss together. Was built into structure in a way, but not valuation issue. (2) discussed w/ RC, JS [Skilling] + BG. *(a) QPQ valuation issue was not a secret to AF – no attempt to conceal.*
>
> What does this say about AA's role. (1) Opinion → AA's role was to help EN find ways to navigate through the rules to find a way for EN to get treatment it desired. They did this through a very

> technical analysis of the rules. (2) *Did AA know this was return of money? AF's opinion: AA knew.* AA actively helping EN to find ways to navigate around the rules.
>
> *AF believed they (AA) were complicit. AF never doubted that EN was sharing entire deal w/ AA.*

The first statement, although cryptic, says nothing about Arthur Andersen. Although Skilling appears to emphasize the statements that the quid pro quo was not a secret, these seem to relate only to the fact that it was not a secret to the individuals named in the note. Further, the 302s indicate that both Causey (RC) and Glisan (BG) were aware of the quid pro quo. The 302s also state that Skilling knew that the purpose of the Raptors was to conceal Enron's valuation of the assets. The first statement thus contains nothing regarding Arthur Andersen's knowledge of the quid pro quo, and the 302s disclose the other information.

Skilling takes the second and third statements out of context. Although all three statements are on the same page of interview notes, the second and third statements appear further down the page from the first and are under the separate heading, "What is AF + BG mindset w/ BG says all we have to do is treat it as 'on', not 'of,'" and the subheading, "What does this say about AA's role." These statements concern Arthur Andersen's approval of the $41 million dollars that LJM received from the Raptors. As Enron and LJM originally structured the deal, LJM was to receive the $41 million as a return *of* capital. Arthur Andersen approved the deal only after this was changed to a return *on* capital. Thus, the second statement regarding what Arthur Andersen "knew" refers to the improper characterization of LJM's return, not the quid pro quo.

Finally, although Fastow's statement that he believed Enron was sharing the entire deal with Arthur Andersen is facially inconsistent with his statement that Arthur Andersen approved everything except the quid pro quo, the statements are not conflicting when placed in context. This third statement appears in a discussion concerning the treatment of LJM's return. That is, this statement regards only the "quid" portion of the side deal; it says nothing about Arthur Andersen's knowledge of LJM's agreement to accept Enron's asset valuations for hedges. Further, the 302s correctly reflect that Arthur Andersen was aware of the improper treatment of LJM's return:

> AA knew that LJM2 was receiving its capital plus a profit but AA always helped Enron find ways around the rules. AA had to know what was going on, because the deal had already been documented with the $41 million put, failed and was revived by this one change [from "of" to "on"]. AA had to understand what was happening. Fastow believes Enron showed AA the entire deal except the quid pro quo.

(alteration added). Thus, the statements in the interview notes add little to what Skilling already knew from the 302s.

### b. Whether Skilling Knew About the Quid Pro Quo

Skilling next contends that the government suppressed statements indicating that he did not know about the quid pro quo. At trial, Fastow testified that he discussed the quid pro quo with Skilling. But during his first interview with the government about the quid pro quo, Fastow identified only four people—besides himself—who were aware of the quid pro quo. Skilling was not one of those people. Skilling asserts that the government violated *Brady* by refusing to disclose that Fastow did not mention Skilling during this first interview.

Skilling, however, is mistaken. The government released two 302s, one from December 2003 and one from January 2005. In the first 302, Fastow listed a number of people that knew of the quid pro quo and did not include Skilling. In the second 302, Fastow said that Skilling did know of the quid pro quo. Skilling should have recognized that Fastow's recollection had changed.[76] Consequently, it is not clear to us that Fastow's failure to mention Skilling during the first interview was even suppressed, much less material.

Skilling also contends that the government should have disclosed a specific statement concerning Skilling's knowledge about the quid pro quo. As Skilling presents this later statement from the interview notes in his supplemental brief,

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[76] The government explains Fastow's shifting recollection by asserting that Fastow remembered more things as he reviewed additional documents.

> *Not sure what Skilling knew.* Causey + Glisan explained structure to JS [Skilling].
> 1) Told JS that BG [Glisan] solved problem on back end.
> 2) *Don't know if JS can say he didn't know about QPQ*, but shouldn't matter b/c entire purpose of Raptor is to conceal financials of ENE – This continues through Restructuring etc.

The indication in the undisclosed statement that Causey and Glisan explained the quid pro quo to Skilling suggests exactly what the 302s state: that Skilling understood the quid pro quo. Additionally, the differences between the December 2003 and January 2005 302s mitigate any harm from the nondisclosure of this statement. In later interviews, Fastow repeatedly stated that he discussed the quid pro quo with Skilling. One interview note in particular reads,

> Discussed Quid Pro Quo w/JS during meetings. Information conveyed was to make sure JS understood + approved structures and understood the QPQ.

Based upon this and other statements, the second 302 stated that "Skilling understood the quid pro quo." That is, the December 2003 302 did not list Skilling as having any knowledge of the quid pro quo, but the January 2005 302 did list Skilling as having this knowledge. Thus, the 302s' different statements about who knew of the quid pro quo should have given Skilling adequate warning that there might be inconsistencies in the interview notes. Based on this discrepancy, Skilling should have been on notice of

Fastow's potentially inconsistent recollection and could have questioned him about this on cross-examination.

### c. Whether Arthur Andersen Approved the Asset Valuations That Were Part of the "Quo"

Skilling also contends that the government suppressed Fastow's statements indicating that Arthur Andersen approved the valuations of assets that Enron hedged in the Raptors. At trial, Fastow testified that LJM allowed Enron to put assets into the Raptors "at whatever level they wanted" without performing due diligence because LJM had no equity at risk. Skilling contends that LJM entered the Raptor transactions not because it had no equity at risk, but because an independent appraiser—Arthur Andersen—approved the valuation. Skilling posits that the interview notes support his assertion. As Skilling states in his supplemental brief,

> In an interview with the Task Force, Fastow conceded he "instructed LJM people to accept [Enron's] valuations" not because LJM2 had *no* equity at risk, but "b/c [Arthur Andersen] would approve [the] valuations."

(quoting interview notes). Skilling asserts that this statement is inconsistent with the 302s, which stated,

> LJM2 would not do due diligence but simply accepted the valuations on Enron's books. AA had already signed off on these valuations.

Again, Skilling is mistaken. Without alterations, the statement in the interview notes reads,

> AF instructed LJM people to accept ENE valuations b/c AA would approve valuations. AF told LJM people would be accommodating to EN on valuation.

Contrary to Skilling's interlineation, this statement does not contradict the government's assertion that LJM entered into the Raptor transactions because it had no equity at risk. Nor is it much different from the 302. Further, the 302 is consistent with another page of the interview notes:

> Told JS – can't get price on these things – due diligence took to long – would use ENE value on books – AA already signed off.

Thus, they are of little exculpatory value.[77]

### 3. Cuiaba

In September 1999, Enron sold a minority interest in a Brazilian power plant called Cuiaba to LJM, allegedly to meet its third quarter earnings targets. According to the government, Skilling promised Fastow that if Enron could not find another purchaser for Cuiaba, it would buy back the interest from LJM at a price that would ensure LJM did not lose any money on the deal. This guarantee eliminated any transfer risk, rendering Enron's recording of earnings from the sale improper. Skilling asserts that the government failed to turn over relevant portions of the interview notes involving this transaction.

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[77] Skilling attempts to bolster his arguments with Fastow's testimony in litigation that occurred after Skilling's trial. For the reasons discussed above, we cannot review this testimony as evidence of a *Brady* violation for the first time on appeal.

### a. Whether Skilling Made a Guarantee to LJM

At trial, Fastow testified that Skilling personally gave him the guarantee, although he admitted that Skilling did not use any words such as "promise." Skilling contends that the government suppressed a number of statements in the interview notes that contradict Fastow's testimony. We address each in turn.

First, Fastow testified that Skilling called Fastow into his office and pressured LJM into purchasing the interest in Cuiaba. Skilling suggests that Fastow's testimony indicates that it was Skilling's idea that LJM purchase Cuiaba, and that this idea originated during their September 1999 meeting. One 302 also suggests that the idea originated with Skilling, stating that "SKILLING wanted LJM1 to purchase interest in Cuiaba." Skilling contends that the following statement in the interview notes contradicts Fastow's testimony and the 302s:

> May have been AF's idea to have LJM
> buy + LJM would be considered a hero
> b/c allowed EN to make #'s.

Skilling thus suggests that the government suppressed information that would have allowed him to impeach Fastow's testimony on this issue.

Even if we take Fastow's testimony and the 302s to indicate what Skilling suggests,[78] he already had information indicating that the idea for LJM to buy Cuiaba might have originated with Fastow. The 302s indicated that Fastow gave Cuiaba as an example of a deal that LJM could do with Enron during a June 1999 presentation to the Enron Board of Directors. This presentation took place months before Skilling and Fastow agreed that LJM would purchase Cuiaba. Thus, the government already disclosed the information in the statement through the 302s.

Second, Fastow testified at trial that Skilling told him that he would not lose any money in the Cuiaba deal. One 302 indicated that "SKILLING gave FASTOW a 'bear hug' which was an assurance that LJM1 would not lose any money on the Cuiaba project." Skilling contends that Fastow's language in his testimony and the 302 are different from that used in the interview notes. In one interview, Fastow reported that Skilling said LJM was "going to be fine." In another interview, Fastow reported that Skilling said "LJM would not get stuck w/ asset – or something similar." Skilling asserts that this variation in language severely calls into question Fastow's ability to recall accurately his conversation with Skilling.

Again, Skilling misrepresents the context of the interview notes by selectively quoting from them. One of the notes to which Skilling points, from an interview on January 20, 2004, states,

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[78] It is not clear to us that the 302s indicate that the idea originated with Skilling; they seem to indicate only that Skilling wanted the deal to happen.

> Toward end of 3rd Q '99–SA group determined not going to make #s. solution was they would sell piece of Cuiaba to LJM – 2–3 wks b/4 end of q – spoke to JS in JS's office. Told JS – Plant had trouble – can't do due diligence. How can get comfortable. JS gave "Bear Hug" – said going to be fine. left room thinking won't lose money. ASF understood Enron would not let LJM lose money on deal – Did not trust that JS would keep word.

In the margin next to this note is written "[illegible] LJM Won't lose [illegible] on' Deal." The other note to which Skilling points, from an interview on January 6, 2004, states,

> Someone figured out selling Cuiaba would fill hole in earnings for 3Q. a) Spoke to JS, RC,
>
> b) Someone suggested LJM buy. Went to JS. Said understood that they want LJM to buy, but it is at end of Quarter and nobody could do the due diligence. JS said LJM would not get stuck w/ asset – or something similar.

From these notes, Skilling points to only the phrases "going to be fine" and "LJM would not get stuck w/ asset – or something similar." Neither of these statements differs much from the statement in the 302s or Fastow's testimony. In context, they all indicate that Skilling actually made the alleged guarantee. The difference in language is of little significance.

Third, Fastow testified that he knew the guarantee, or "bear hug," was wrong. Fastow also testified that the Cuiaba guarantee was the first time that Enron made such a guarantee to LJM. Skilling contends that this testimony is contradicted by Fastow's statement in the interview notes that he "didn't have feeling asking JS to do anything unusual or that hadn't been done." Skilling argues that if there were in fact a guarantee and it were the first such guarantee, then it *would* have been unusual and *would not* have been done before. Skilling thus asserts that Fastow's statement in the interview notes is inconsistent with the government's assertion that Skilling made an unlawful guarantee to Fastow during the September 1999 meeting.

As the government asserts, Skilling again misrepresents the context of this statement. Skilling and Fastow formed LJM to conduct a particular transaction with Enron, and Cuiaba was the first deal thereafter. Thus, Cuiaba was the first opportunity for such a guarantee between Skilling and Fastow. In this context, it is difficult to imagine how Fastow could indicate that such guarantees had been done before; he was discussing the second-ever deal between Enron and LJM. The interview notes confirm this conclusion. The relevant portion of the interview notes reads as follows:

> BANKS:
> Cuiaba: Thought this was an opportunity for ASF to be hero for ENE. Want to make sure JS knew this + to get assurance that would not lose money on deal. JS – AF – you do not have to worry about losing money on deal. ENE

> would take any action to enhance opportunity to report deal or conclude a deal. Didn't have feeling asking JS to do anything unusual or that hadn't been done. Bankers wanted credit for what they did. Wanted someone at ENE to acknowledge what bank had done. Rare for bank to do business w/out expectation of "chit" from enron.

In context, the statement indicates that Fastow did not think that it was unusual for Skilling to reward those who had helped Enron conclude a deal, not that the specific promise between Skilling and Fastow was not unusual. The statement is arguably inculpatory, as it indicates that side deals and guarantees were within the normal course of business.

Skilling's remaining argument regarding whether he made a guarantee relies on the statement "JS could have said you are stuck w/ Cuiaba" appearing in one of the interview notes. The district court did not review this note, as the government failed to include it in the Fastow Binders. For the reasons stated above, we will not address this *Brady* claim for the first time on appeal.

#### b. Whether Skilling Confirmed the Guarantee in a Conversation with Michael Kopper

Fastow testified that Enron was going to repurchase the Cuiaba interest from LJM, but that he wished to avoid any unwelcome scrutiny of the transaction. To do this, Fastow was to nominally transfer his interest in LJM to Michael Kopper, and Kopper then was then to sell the Cuiaba interest to Enron, making it look as if Fastow took no part in the buyback. Fastow also testified that Skilling confirmed to Fastow that Enron would honor the original guarantee. Finally, pursuant to the coconspirator exception to the hearsay rule, Fastow related Kopper's statement that he had spoken with Skilling and that Skilling had confirmed the original guarantee. On these topics, the first 302 stated,

> FASTOW, CAUSEY, and MINTZ all agreed and understood that Enron would honor the original "bear hug" provided by SKILLING after FASTOW disposed of his interest in LJM1. . . . FASTOW may have told KOPPER to talk to SKILLING about the "bear hug" when KOPPER purchased his interest in LJM1.

(omission added). The second 302 stated,

> Cuiaba was included in LJM's sale economics and Kopper knew Enron would repurchase Cuiaba because he spoke to Skilling and Causey about the Cuiaba buy-back. Fastow asked Skilling to make Kopper comfortable with buying LJM and assure Kopper that Enron would continue to do deals with LJM. Fastow is uncertain whether he specifically mentioned Cuiaba when he asked Skilling to meet with Kopper.

Skilling contends that the government suppressed evidence in the interview notes relating to Kopper and these transactions. In particular, Skilling points to the following statement in the interview notes:

> AF might have told MK to talk to JS about buyout. AF doesn't know if MK went to talk w/ JS.

Skilling argues that the statement that Fastow "doesn't know" if Kopper spoke with Skilling contradicts Fastow's testimony and the 302s, and thus should have been disclosed. Skilling asserts that the government's nondisclosure of this statement makes it "obvious" that the government "manufactured the entire Skilling-Kopper conversation and intentionally distorted the evidence to prove it."[79]

Once again, Skilling overstates his claim. The interview notes on which Skilling focuses are consistent with the first 302, which indicates that Fastow might have told Kopper to speak to Skilling. The lack of any information about whether Kopper followed up on what Skilling might have recommended indicates that Fastow did not know whether Kopper actually met with Skilling. Further, the statement in the second 302 that Kopper did in fact speak with Skilling, when juxtaposed against the statement in the first 302, indicates that Fastow's recollection might have changed. Skilling thus could have questioned Fastow about his changing recollection of these events.

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[79] In support of this assertion, Skilling relies on statements contained in Kopper's 302. This document is not in our record, and there is no indication that Skilling presented it to the district court. Indeed, Skilling stipulates that he obtained access to the document only recently when "counsel in another matter provided it to Skilling on the condition that [he]could use it solely in connection with [his supplemental] brief and for no other purpose without further approval." Even if we could confirm the statements that Skilling says are in Kopper's 302, we could not consider this alleged *Brady* evidence for the first time on appeal.

### 4. Nigerian Barges

According to the government, Enron wished to unload its interest in energy-producing barges moored off the coast of Nigeria. Although Fastow at first was reluctant to have LJM buy the barges, Fastow testified that Skilling again gave him an implied guarantee, or "bear hug," that LJM would not lose money in the deal. Fastow thus agreed to purchase the barges, if necessary, but wished to wait six months. To keep the barges off of its books for the interim, Enron purported to sell the barges to Merrill Lynch. Fastow secretly guaranteed to Merrill Lynch that it would receive a certain rate of return on the investment, that Enron would seek a third-party buyer, and that Enron would ensure that Merrill Lynch had resold the barges within six months. Because these guarantees prevented Merrill Lynch from having any equity at risk, this transaction was fraudulent. Skilling alleges that the government withheld exculpatory information from the interview notes regarding this deal.

#### a. Whether Skilling Made a Guarantee to Fastow

Skilling faults the government for not disclosing that, during five interviews regarding the barges deal, Fastow never asserted that Skilling gave him a "bear hug" or other guarantee. The interview notes upon which Skilling relies for this argument, however, are consistent with the 302s. Nowhere in the relevant portions of the 302s does Fastow assert that Skilling guaranteed that Fastow would not lose money on the barges deal. The only portion of the 302 that might be read as such a guarantee states,

> Fastow was comfortable with Skilling's assurance that he would not be stuck with the Nigerian barges. He wanted the assurance from Skilling, because he could rely on it.

Yet this statement does not clearly indicate that Skilling gave Fastow a guarantee. Indeed, it instead reflects the interview notes quite accurately:

> In Barges conversation. Due to discussion w/ JS. Comfortable would not be stuck with Barge.

Skilling does not point to anywhere in the 302s where Fastow indicated that Skilling gave him a guarantee concerning the barges deal. Thus, just as the interview notes did not contain any indication that Skilling guaranteed that LJM would not lose money on the barges deal, neither did the 302s. Skilling did not need the interview notes to attack Fastow's testimony on this issue.

### b. Whether Fastow Made a Guarantee to Merrill Lynch

To corroborate Fastow's testimony on the guarantee to Merrill Lynch, the government introduced two documents: an email from Ben Glisan to Enron employees and a document titled "Benefits to Enron," which concerned the barges deal. Upon being shown these documents, Fastow testified that they "reflected" his "guarantee to Merrill Lynch." Skilling contends that the government did not disclose interview notes wherein Fastow indicated that these documents were "not consistent" with his understanding of the barges deal, which Skilling argues directly contradicts Fastow's testimony.

The Glisan email stated, "To be clear, Enron is obligated to get Merrill out of the deal on or before June 30." The interview notes report that Fastow stated the following upon reviewing the email:

> Next Email – from BG, 5/11/00
>
> 1) Did not see Email b/4 today. Object to word obligated. Not bothered that it is ENE w/ obligation.

Skilling argues that the government improperly withheld Fastow's statement that he objected to the word "obligated" in the Glisan email.

The Benefits to Enron document stated that "Enron sold barges to Merrill Lynch in December 1999, promising that Merrill would be taken out by sale to another investor by June 2000." The interview notes report that Fastow stated the following upon reviewing the Benefits to Enron document:

> Benefits to Enron Summary – [illegible]
>
> 1) The 1st Paragraph – Description of transaction.
>
> 2) Summary not consistent w/ AF's memory b/c not word "promise"
>
> 3) It was EN's obligation to use "best effort" to find 3rd Party takeout + went on to say there would be 3rd party b/c AF is manager of 3rd Party.
>
> > a) B/C of ENE's course of action over years would have taken ML out.

> > b) Phone call did not obligate ENE to buy out, Did not intend to bind ENE, was binding LJM to do something. LJM was 3d party + was already found.
>
> 4) "Best Efforts" – must do everything possible that a reasonable businessman would do to achieve result.
>
> > a) Best effort different from guarantee b/c still obligated to perform. Best effort would be to find 3rd party to accomplish buyout.
>
> 5) Could have said "Promise to use best efforts" but don't recall saying that.

Skilling contends that the government improperly withheld Fastow's statement that the Benefits to Enron document was inconsistent with his memory because it used the word "promise." In addition to arguing that this statement contradicts Fastow's testimony, Skilling alleges that disclosure would have bolstered his theory of the case and supported his jury instructions argument.

The 302s, however, effectively disclosed the information in these statements. Skilling knew of the content of the interview notes concerning the Glisan email based upon Fastow's repeated statements in the 302s that Enron would not repurchase the barges, because LJM would instead. That is, the 302s did not indicate that Enron was obligated, which is consistent with the information in the interview notes. Thus, Skilling already had the information necessary to challenge Fastow's statement that the email "reflected" the guarantee.

As to the Benefits to Enron document, the 302s make clear that Fastow did not use the word promise because he did not need to. According to the 302s, anyone listening would have realized that Fastow was making a promise without using the actual word. Further, the statement that Enron would use its best efforts to secure a purchaser is not at odds with the 302s, particularly the statements that "FASTOW thinks there was every intention that Enron would find a buyer for ML" and "ML could have a high level of confidence that an entity was interested in the barges and that entity, LJM, would buy the barges after six months." In other words, it was not Enron itself that was formally bound to buy the interest from Merrill Lynch; LJM would do so if Enron's "best efforts" did not result in another buyer. Again, Skilling had all the information necessary to challenge Fastow's testimony that the Benefits to Enron document "reflected" the guarantee.

### c. Corroboration of Guarantee to Merrill Lynch

Ben Glisan and Chris Loehr both worked for Fastow, and their testimony corroborated the existence of a guarantee to Merrill Lynch. Skilling asserts that the government improperly refused to disclose notes that reveal, in Skilling's words, that

> Fastow explained to the Task Force that he *lied* to "subordinates" by "tell[ing] Enron people this was a guarantee" in order to "motivate" and "light a fire" within Enron to remarket the barges to a third-party.

Skilling argues that the notes reveal that Fastow lied to subordinates, including Glisan and Loehr. If Fastow had lied to Glisan and Loehr about the existence of a guarantee, so the argument goes, their knowledge of the guarantee could have been based entirely on lies. If that were the case, Skilling could have used that information to undermine their testimony.

Skilling again misrepresents the interview notes. Nowhere in the notes to which Skilling points does Fastow admit to "lying" to subordinates. The relevant portion of the interview notes reads,

> w/ Subordinates
>
> 1) Probably used a shorthand word like promise or guarantee as
>
> 2) Internally at Enron. AF, JM + BG would tell Enron people that there was a guarantee so to light a fire under Int'l people – so it should be in paperwork.
>
> 3) On phone call, didn't say EN would buy back, – Rep of 3rd Party. Explicit. Internally said Enron would buy back. Unit less motivated if knew of LJM. "Enron will take necessary steps to make sure you are out of this by June 30." → Reasonable for person on other end to think Enron.

This statement does not contradict Fastow's assertions that he made an implicit guarantee to Merrill Lynch. Immediately preceding these notes, Fastow discussed the guarantee with Merrill Lynch extensively, repeatedly noting that he had made a guarantee in everything but name and was avoiding the word to protect the accounting treatment. Thus, he was not necessarily lying when using words like "promise" or "guarantee" with his subordinates.

Further, these notes do not support Skilling's argument that Glisan and Loehr based their testimony only upon Fastow's lies. First, the notes report Fastow as saying that "BG," presumably Ben Glisan, was party to the plan to "tell Enron people that this was a guarantee." As Skilling bases his argument that Fastow "lied" to Glisan upon this statement, it is difficult to understand how it indicates that Fastow lied to Glisan about something which they were then both supposed to lie about to "Enron people." That is, it is unlikely that Glisan was confused about the nature of the deal as a whole if he was also lying to the "Enron people." Second, Loehr worked at both Enron and LJM, and he offered explicit testimony about the intricacies of the Enron/LJM interactions, so it is unreasonable to conclude that he was tricked by Fastow's alleged lie. Therefore, it is unlikely that Skilling could have used this statement to impeach either corroborating witness.

### D. Materiality

As noted above, when a defendant alleges multiple *Brady* violations, we must consider the materiality of all suppressed evidence cumulatively. As a preliminary matter, we note that Skilling has failed to establish that the government even suppressed some of the information at issue. The materiality of any non-suppressed information is irrelevant to our cumulative analysis. *See Sipe*, 388 F.3d at 493 (Smith, J., dissenting). Thus, we consider only the cumulative materiality of the undisclosed interview notes that the government included in the Fastow

Binders, not Skilling's arguments concerning Fastow's plea agreement or the government's use of an open file. Further, a few of Skilling's alleged *Brady* violations are not properly before this court because the district court did not consider them.[80] They, too, are irrelevant to our cumulative analysis.[81]

Considering that we are reviewing the district court's determination that these interview notes did not contain any *Brady* material only for clear error, we need not dwell long on materiality. Skilling has established that there are some differences between the interview notes and the 302s. Yet none of the undisclosed statements are particularly material, and many are wholly immaterial. For several of Skilling's allegations, he has misunderstood—or misrepresented—the contents of the interview notes. For others, the government has presented a reasonable argument as to why the undisclosed statements are of little or no materiality. We therefore hold that Skilling has failed to establish any violations of *Brady*.

---

[80] Skilling attached an appendix to his supplemental brief containing additional examples of allegedly suppressed and exculpatory evidence. The district court did not consider four of these examples, and thus we cannot review them on appeal. In any event, "arguments may not be properly raised by incorporating them by reference from the appendix rather than discussing them in the brief." *Graphic Controls Corp. v. Utah Med. Prods., Inc.*, 149 F.3d 1382, 1385 (Fed. Cir. 1998) (applying what was then Federal Rule of Appellate Procedure 28(a)(6)). Thus, we do not address the statements in Skilling's appendix.

[81] We note, however, that another court properly considering these other alleged *Brady* violations may have to consider their cumulative materiality, if any, alongside the materiality of the alleged *Brady* violations that are now properly before us.

## VIII. Sentencing

Skilling challenges various aspects of his sentence. In particular, he disputes the district court's application of the Sentencing Guidelines and the reasonableness of his sentence under 18 U.S.C. § 3553(a). Because we decide that the court committed error in applying the Guidelines, we do not reach the § 3553(a) requirements, as proper calculation of the Guidelines range is antecedent to a reasonableness challenge. *See Gall v. United States*, 128 S. Ct. 586, 596-97 (2007).

Under the 2000 Sentencing Guidelines, Skilling had a base offense level of 6, which the district court subsequently enhanced to 40. With a criminal history category of I, that yielded a sentencing range under the Guidelines of 292 to 365 months' imprisonment. Skilling objected to some of the enhancements at sentencing. The court rejected those objections and sentenced Skilling at the bottom of the advisory range, or 292 months. On appeal, Skilling specifically objects to the two-level enhancement for obstruction of justice, pursuant to U.S. SENTENCING GUIDELINES MANUAL ("U.S.S.G.") § 3C1.1 (2000), and the four-level enhancement for substantially jeopardizing the safety and soundness of a financial institution, pursuant to U.S.S.G. § 2F1.1(b)(8)(A) (2000). We review the application and interpretation of the Guidelines de novo. *United States v. Solis-Garcia*, 420 F.3d 511, 514 (5th Cir. 2005).

### A. Obstruction of Justice

The court enhanced Skilling's sentence pursuant to U.S.S.G. § 3C1.1[82] for obstruction of justice based on testimony Skilling gave to the SEC on December 6, 2001. Skilling stated that he had sold stock on September 17, 2001, solely because of the terrorist attacks of September 11, 2001. The court determined that this statement was perjury, because a preponderance of the evidence showed that Skilling had tried to sell stock before the attacks, on September 6. The Sentencing Guidelines specifically mention perjury as a type of conduct that constitutes obstruction of justice. U.S.S.G. § 3C1.1 cmt. 4(b).

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[82] Section 3C1.1 provides,

Skilling does not argue, however, that the court erred in finding perjury before the SEC. Rather, he reasons that the court could not use the testimony at all because the SEC and the Department of Justice were improperly collaborating.[83]

---

> If (A) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the course of the investigation, prosecution, or sentencing of the instant offense of conviction, and (B) the obstructive conduct related to (i) the defendant's offense of conviction and any relevant conduct; or (ii) a closely related offense, increase the offense level by 2 levels.

U.S.S.G. § 3C1.1.

[83] The government suggests that Skilling waived this argument because he failed to object to the use of this testimony at sentencing. Skilling counters by drawing our attention to his written objections to the presentence investigation report, in which he disputed the enhancement. In particular, he stated that because he "was not aware of an investigation 'against him' at the time he testified before the SEC, his testimony before that body cannot, as a matter of law, trigger the obstruction adjustment." We need not decide this issue, because we find no error in the court invoking this enhancement.

Skilling relies on *United States v. Tweel*, 550 F.2d 297, 299-300 (5th Cir. 1977), for the proposition that when an agency deliberately misleads someone whom it is investigating, it invariably taints any consent that the person under investigation provides, requiring suppression of the evidence. The Supreme Court and other circuit courts have made similar statements.[84] It follows that if the district court should have suppressed the evidence of Skilling's testimony before the SEC, then § 3C1.1 cannot apply in this case. However, the case law does not support the premise that the district court had to suppress this evidence at sentencing.

Skilling avers that the district court believed that the Enron Task Force and SEC had merged into one prosecutorial team and that the SEC had acted on the Task Force's behalf in connection with Skilling's criminal case. Assuming that they had in fact merged, and that by the time of his testimony the SEC was deliberately misleading Skilling as to the nature of the investigation, the issue of whether the results of the investigation could be used at sentencing remains open.

Ordinarily, a district court can consider illegally obtained evidence at sentencing even if that evidence is not admissible at trial, *United States v. Robins*, 978 F.2d 881, 891 (5th Cir. 1992), although there may be exceptions. For example, we have approvingly cited *Verdugo v. United States*, 402 F.2d 599, 611-12 (9th Cir. 1968), for the proposition that on a case-by-case basis, it might be improper for a district court to consider certain evidence at sentencing. *See Robins*, 978 F.2d at 891. This is particularly true where "the use of illegally seized evidence at sentencing would provide a substantial incentive for unconstitutional searches and seizures." *Verdugo*, 402 F.2d at 613. In other words, we may look, case-by-case, to whether the admission of the evidence will encourage the government to obtain evidence illegally.

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[84] *See, e.g., United States v. Kordel*, 397 U.S. 1, 11-13 (1970); *United States v. Grunewald*, 987 F.2d 531, 534 (8th Cir. 1993); *United States v. Robson*, 477 F.2d 13, 18 (9th Cir. 1973).

This principle cuts against Skilling. Admitting the evidence of his perjury for purposes of sentencing will not encourage the government to conduct improper parallel investigations or unconstitutional searches. The parallel-investigation cases ordinarily involve a defendant who gives incriminating, but truthful, testimony. *See Tweel*, 550 F.2d at 298 (providing copies of tax returns). The reason for our concern in these cases is that the government should not use deceit to encourage a defendant to cooperate in a civil investigation during which he in essence incriminates himself. But where, as here, a defendant's own false testimony is used against him, we have no such concerns. After all, Skilling has not provided us with any justification for his lying under oath in a purely civil proceeding.

We therefore do not see a need to deviate from our general rule that, at sentencing, "a district court may conduct an inquiry broad in scope, largely unlimited either as to the kind of information it may consider, or the source from which such information may come." *Robins*, 978 F.2d at 891. Accordingly, the district court did not err in using Skilling's SEC testimony at sentencing.

## B. Jeopardizing the Safety and Soundness of a Financial Institution

Skilling appeals the four-level enhancement for substantially jeopardizing the safety and soundness of a "financial institution" pursuant to U.S.S.G. § 2F1.1(b)(8)(A) (2000). He urges that the enhancement is incorrect for two reasons. First, he says that because the evidence at trial did not prove that his conduct caused Enron's bankruptcy, it was impossible to say that he substantially jeopardized any financial institution. Second, he posits that the Enron Corporation Savings Plan and the Employee Stock Ownership Plan (collectively the "Retirement Plans") are not "financial institutions" as that phrase is used in § 2F1.1, so the section cannot apply at all. Because we agree with the second contention, we do not reach the first.

We review the district court's decision that the Retirement Plans are "financial institutions" de novo, because it is an issue of law. *United States v. Soileau*, 309 F.3d 877, 878-79 (5th Cir. 2002). The Guidelines section at issue, § 2F1.1(b)(8), provides, "If the offense (A) substantially jeopardized the safety and soundness of a financial institution; . . . increase by 4 levels." As used in the Guidelines, "financial institution"

> is defined to include any institution described in 18 U.S.C. §§ 20, 656, 657, 1005-1007, and 1014; any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; any health, medi-

> cal or hospital insurance association; brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission; futures commodity merchants and commodity pool operators registered, or required to be registered, with the Commodity Futures Trading Commission; and any similar entity, whether or not insured by the federal government. "Union or employee pension fund" and "any health, medical, or hospital insurance association," as used above, primarily include large pension funds that serve many individuals (*e.g.*, pension funds of large national and international organizations, unions, and corporations doing substantial interstate business), and associations that undertake to provide pension, disability, or other benefits (*e.g.*, medical or hospitalization insurance) to large numbers of persons.

U.S.S.G. § 2F1.1 cmt. 19.

The definition does not explicitly mention retirement plans, such as the two at issue here, even though neither is a particularly novel retirement vehicle. The question is whether the Retirement Plans are "pension funds" or whether they fall into the "any similar entity" catch-all.

The government, relying on BLACK'S LAW DICTIONARY, argues that the Retirement Plans are in fact "pension funds." Black's does not define "pension fund" but does define "pension plan." The government equates these terms, and we see no reason not to do so as well. Black's defines "pension plan" in two ways:

> 1. Under ERISA, any plan, fund, or program established or maintained by an employer or an employee organization that provides retirement income to employees or results in a deferral of income by employees extending to the termination of employment or beyond. 29 USCA § 1002(2)(A).
>
> 2. Under the Internal Revenue Code, an employer's plan established and maintained primarily to provide systematically for the payment of definitely determinable benefits to employees over a period of years, usu. for life, after retirement.

BLACK'S LAW DICTIONARY 1170 (8th ed. 2004) (paragraph break added). This definition, unfortunately, is unhelpful in settling the dispute at hand, and the government tellingly cites only the ERISA portion.[85] There is no doubt that, under ERISA, the Retirement Plans are "pension funds," because employees contributed to them for the purpose of securing retirement income. On the other hand, under the Internal Revenue Code, the plans were not established to pay "definitely determinable benefits," because these retirement accounts, by virtue of being un-guaranteed equity investments, were highly variable: no one was guaranteed any rate of return. Nor is the elaboration of "[u]nion or employee pension fund," U.S.S.G. § 2F1.1 cmt. 19, helpful, because that definition still does not define "pension fund."

---

[85] Contrary to the government's argument, Black's defines "pension" as "[a] fixed sum paid regularly to a person." BLACK'S LAW DICTIONARY 1170 (8th ed. 2004). This leads to the assumption that a pension fund, or pension plan, without any statutory gloss, would be a plan that promised a fixed sum at regular intervals. The Retirement Plans do not provide this.

If the Retirement Plans are not "pension funds," another option is to determine whether the Retirement Plans fall into the Guidelines' "any similar entity" catch-all. In the government's favor, the definition lists mutual funds, which, like the Retirement Plans, also do not provide determined benefits.

This analogy is unhelpful, however, because the other examples in the definition, with the exception of "pension funds," which the Guidelines do not pellucidly define, are specific and individual financial entities. The definition speaks, inter alia, of entities that must be registered with the SEC or the Commodities Futures Trading Commission, banks, trust companies, and credit unions. U.S.S.G. § 2F1.1 cmt. 19. Additionally, we have already held that Medicare is not a financial institution, even though it might have features similar to some of the explicitly enumerated institutions, such as private insurance associations. *See Soileau*, 309 F.3d at 881 (holding that the enhancement should not apply because the definition does not explicitly mention Medicare). If anything, this cautions us against extending the definition without convincing evidence.

Under the government's position, any large corporation would become a financial institution just by virtue of providing its employees with a tax-sanctioned retirement account. If that account is a "pension fund," then placing that fund in jeopardy would, of course, lead to the application of this enhancement. We are unprepared to declare every corporate retirement vehicle a "financial institution."

Even if the government has presented a reasonable interpretation of the enhancement, the rule of lenity counsels that we must resolve any doubts in the interpretation of a criminal provision in favor of the defendant. *United States v. Cuellar*, 478 F.3d 282, 300 (5th Cir. 2007) (en banc) (Smith, J., dissenting), *majority rev'd on other grounds*, 128 S. Ct. 1994 (2008). Because both sides have made reasonable arguments as to the meaning of "financial institution," this case falls within the rule, and we resolve any doubts in favor of Skilling. The court therefore erred in applying this enhancement.

In sum, although the district court properly applied the obstruction of justice enhancement, it incorrectly applied an enhancement for substantially jeopardizing a "financial institution." Accordingly, we vacate Skilling's sentence and remand for resentencing.

## IX. Conclusion

Skilling failed to demonstrate that the government's case rested on an incorrect theory of law or that any reversible errors infected his trial. Accordingly, we AFFIRM Skilling's convictions in all respects. We VACATE Skilling's sentence and REMAND for resentencing.

## APPENDIX B

## DENIAL OF REHEARING & REHEARING EN BANC

U.S. COURT OF APPEALS
**FILED**
FEB 10 2009
CHARLES R. FULBRUGE III
CLERK

IN THE UNITED STATES
COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-20885

UNITED STATES OF AMERICA
Plaintiff-Appellee
v.
JEFFREY K SKILLING
Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas

## ON PETITION FOR REHEARING AND REHEARING EN BANC

(Opinion 1/6/09, 5 Cir., __________, ____________
F . 3d _____________)

Before SMITH, and PRADO, Circuit Judges, and LUDLUM*, District Judge.

PER CURIAM:

( X ) The Petition for Rehearing is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED . R. APP. P. and 5th CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

(   ) The Petition for Rehearing is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor, (FED. R. APP. P. and 5th CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

(   ) A member of the court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service and not disqualified not having voted in favor, Rehearing En Banc is DENIED.

---

* District Judge of the Western District of Texas, sitting by designation.

ENTERED FOR THE COURT:

__________________________________

United States Circuit Judge

Judges King, Davis, Clement, Owen, and Elrod did not participate in the consideration of the rehearing en banc.

# APPENDIX C
## DENIAL OF BAIL PENDING APPEAL

IN THE UNITED STATES
COURT OF APPEALS
FOR THE FIFTH CIRCUIT

---

No. 06-20885

---

U.S. COURT OF APPEALS
**FILED**
DEC 12 2006
CHARLES R. FULBRUGE III
CLERK

UNITED STATES OF AMERICA
Plaintiff-Appellee

v.

JEFFREY K SKILLING
Defendant-Appellant

---

Appeal from the United States District Court
for the Southern District of Texas

---

(CR H-04-025)

Before PATRICK E. HIGGINBOTHAM, Circuit Judge:

Defendant Jeffrey Skilling moves for bail pending appeal of his conviction after a jury trial on nineteen counts of conspiracy, securities fraud, making false statements to auditors, and insider trading. Skilling was sentenced on October 23, 2006 to 292 months of imprisonment. His surrender date is currently stayed, pending the Court's decision on this motion. The district judge denied the request for bail in a carefully written opinion.

By act of Congress, we must order that Skilling be detained during appeal, unless we find, *inter alia*, that his appeal raises "a substantial question likely to result in a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process."[1]

Our review has disclosed serious frailties in Skilling's conviction of conspiracy, securities fraud, and insider trading, difficulties brought by a decision of this court handed down after the jury's verdict,[2] as well as less formidable questions regarding the giving of a jury instruction on deliberate ignorance. Yet Skilling raises no substantial question that is likely to result in the reversal of his convictions on all of the charged counts. We are not then persuaded that any resulting sentence will likely exceed the expected duration of his appeal. Defendant's motion for bail pending appeal is DENIED. The stay of Defendant's surrender date is lifted.

SO ORDERED.

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[1] 18 USC § 143(b); *United States v. Clark*, 917 F.2d 177 (5th Cir. 1990).

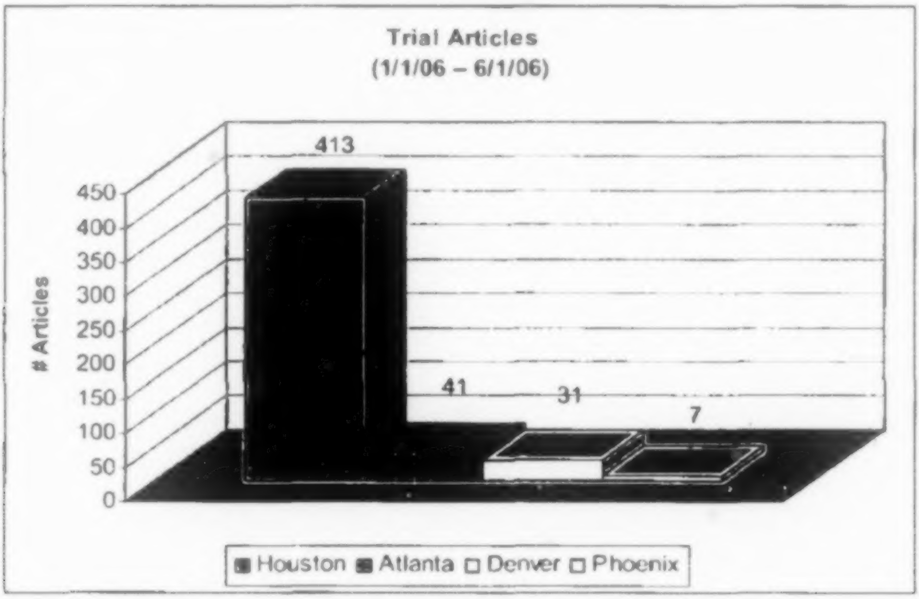
[2] *United States v. Brown*, 459 F.3d 509 (5th Cir. 2006).

# APPENDIX D

# SAMPLE PUBLICITY MATERIALS

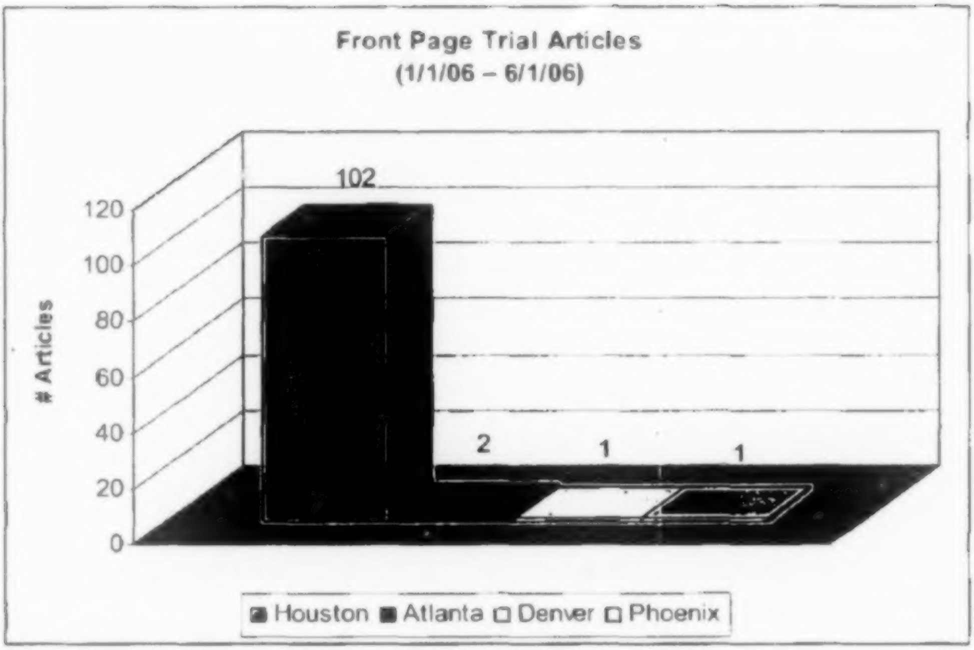
All materials cited below are record exhibits, collected and cited at Pet. C.A. Reply Br. Appx. 2.

## Houston v. Other Venues



JKS-25.

BEST AVAILABLE COPY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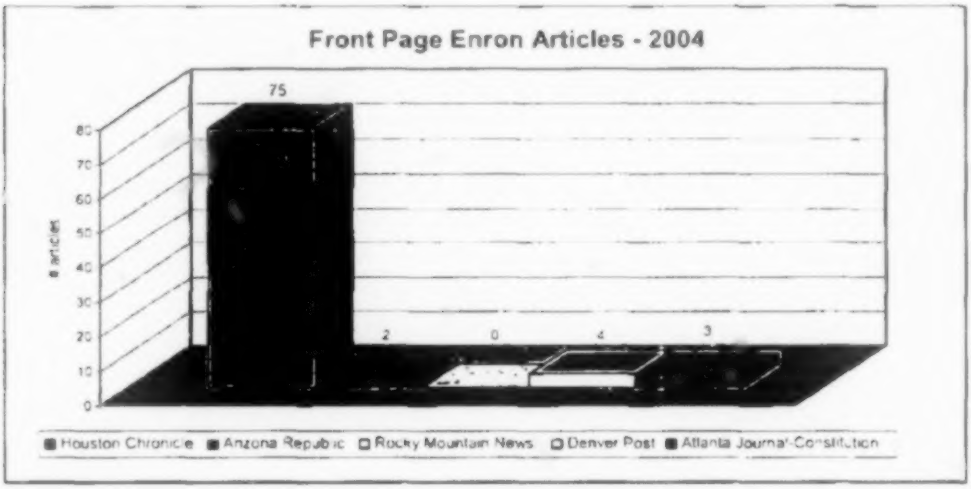
JKS-25.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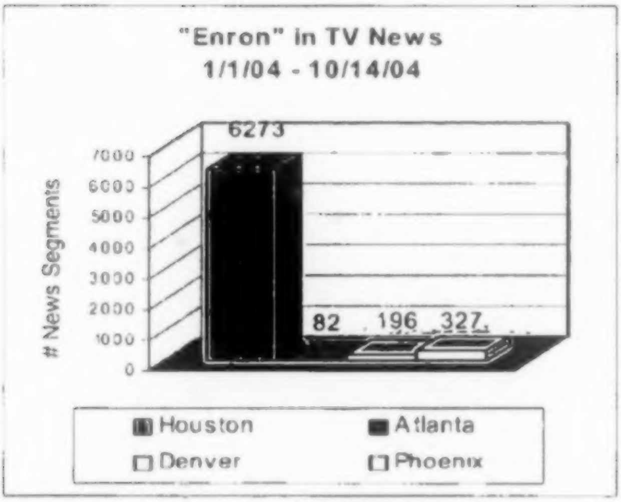
R:2649.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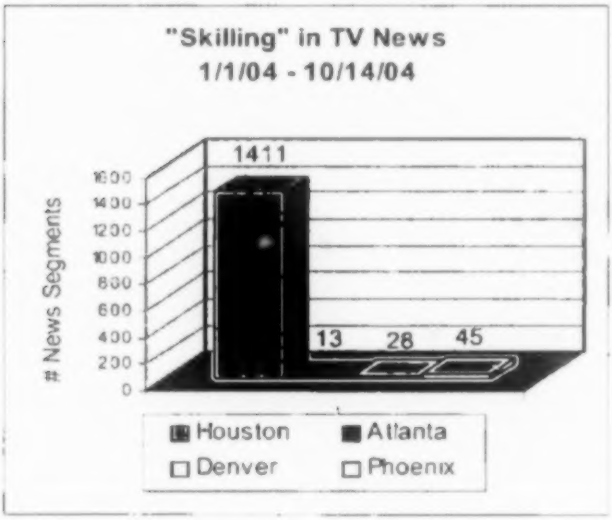
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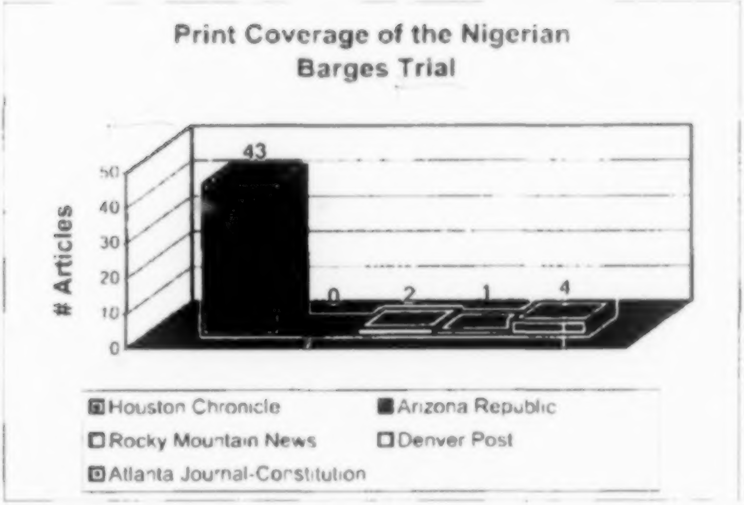
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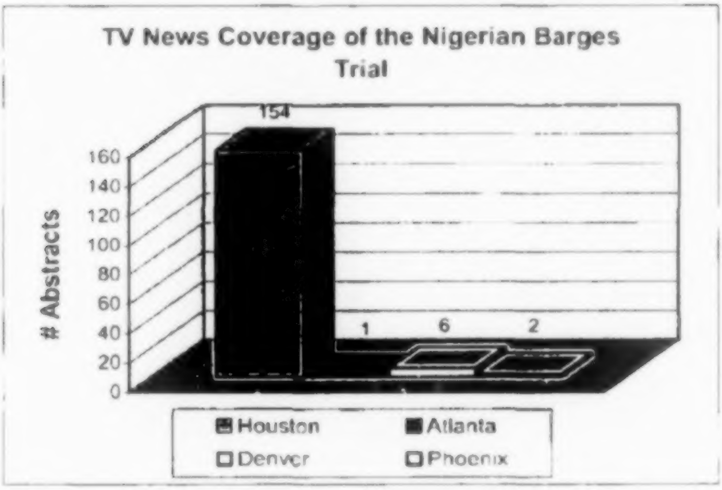
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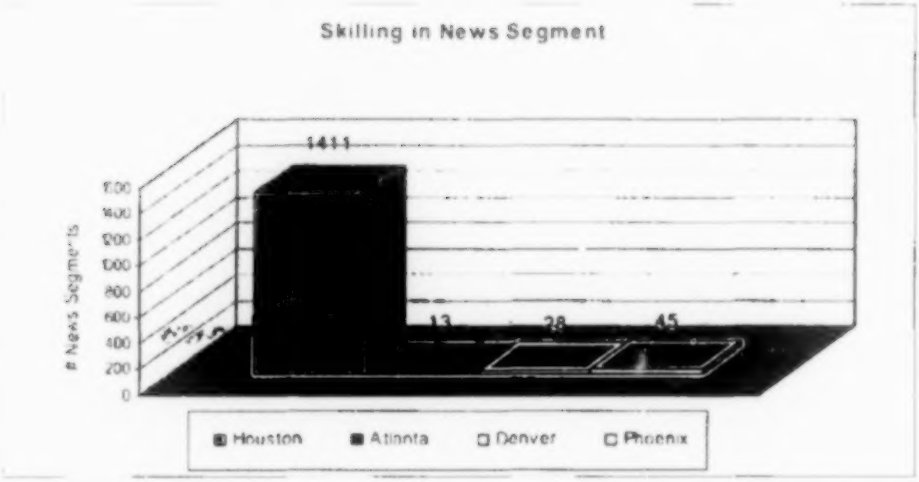
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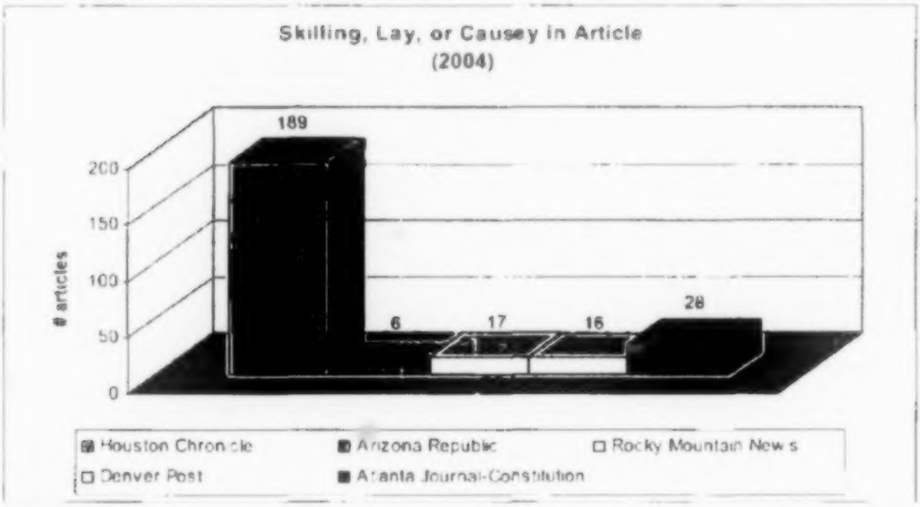
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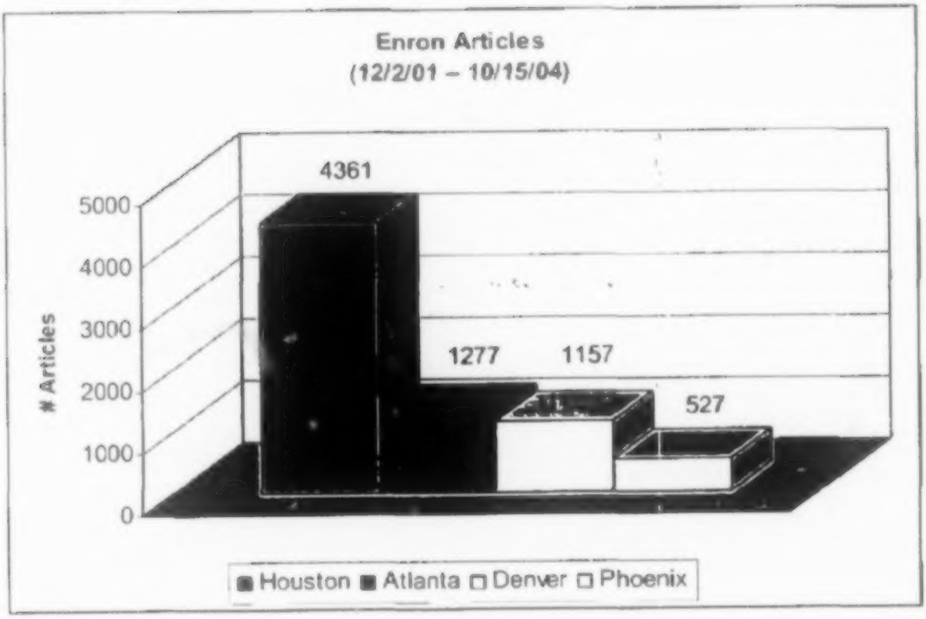
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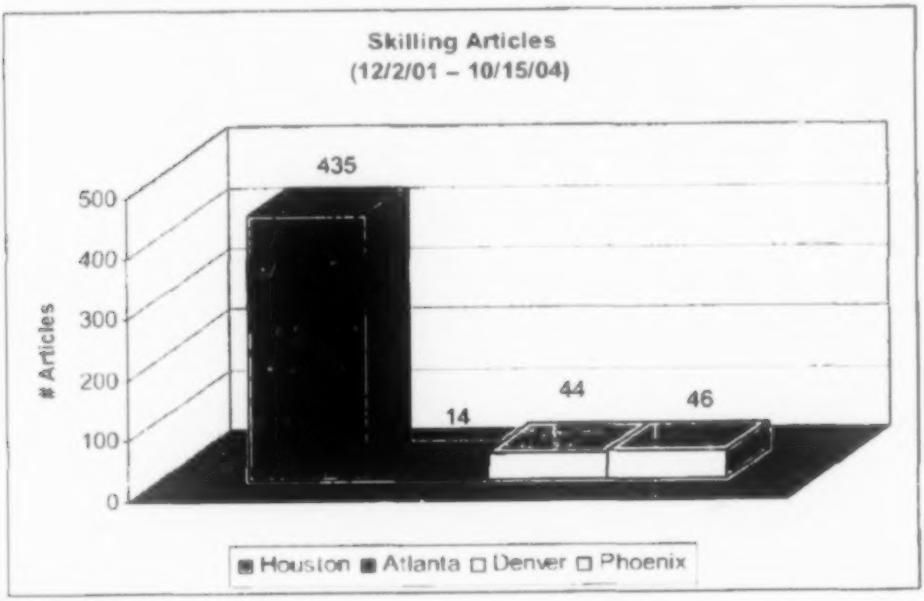
Skilling Articles
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# Articles
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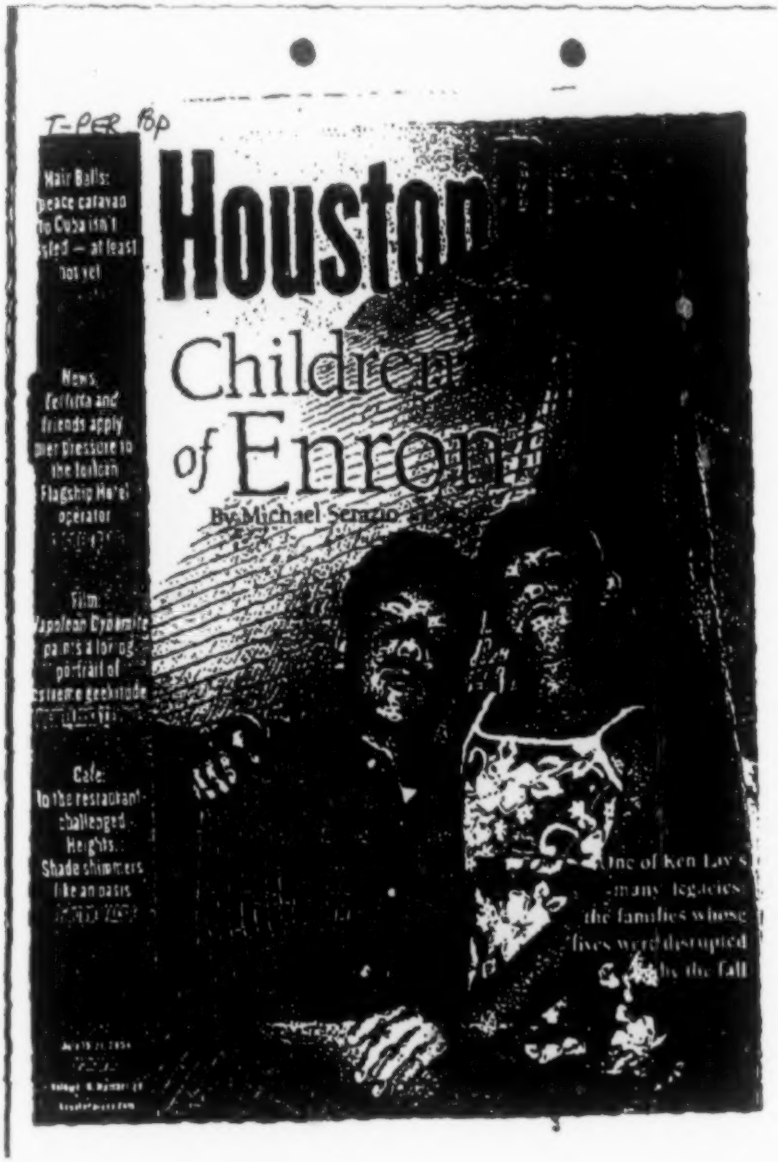
JKS-25.

## Various Other Publicity Materials



T-PER 18p

Hair Balls: peace caravan to Cuba isn't sted — at least not yet

News: Ferfitta and friends apply peer pressure to the Iorlean Flagship Hotel operator

Film: Napoleon Dynamite paints a loving portrait of extreme geekitude

Cafe: In the restaurant-challenged Heights, Shade shimmers like an oasis

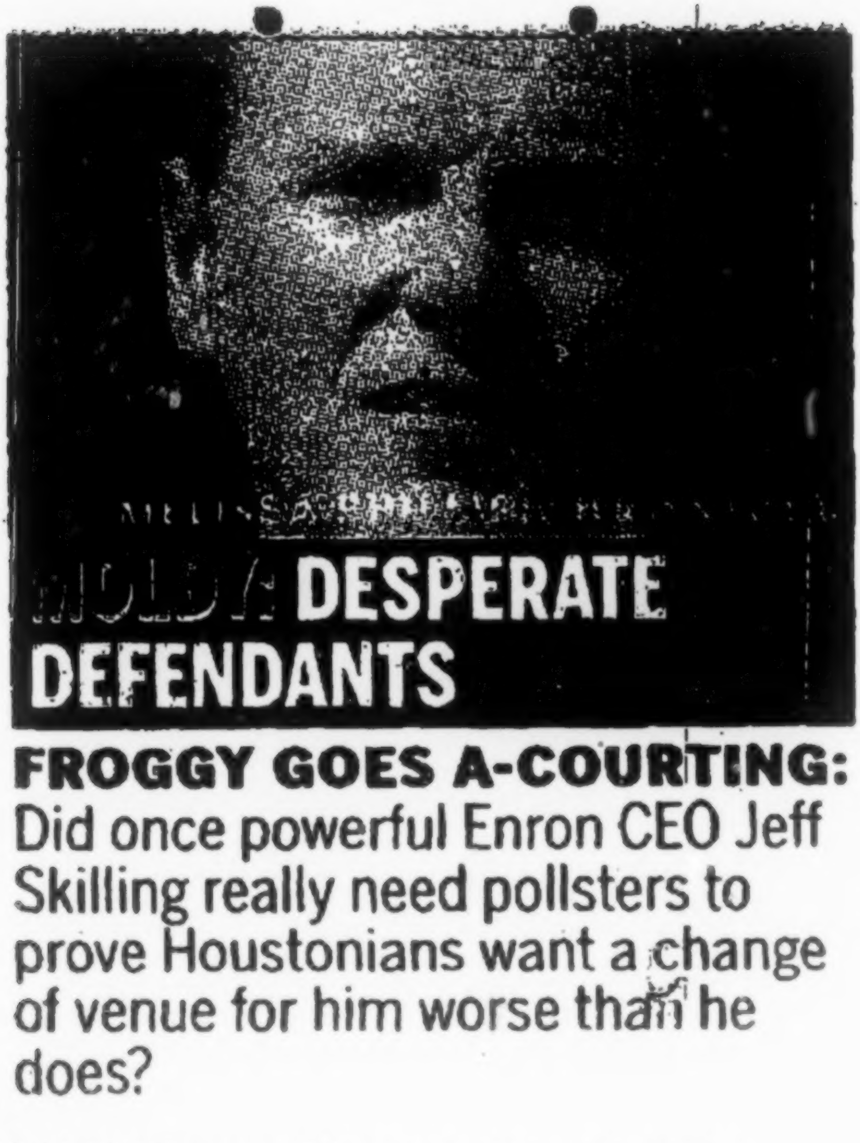
Houston

Children of Enron

By Michael Serazio

One of Ken Lay's many legacies: the families whose lives were disrupted by the fall

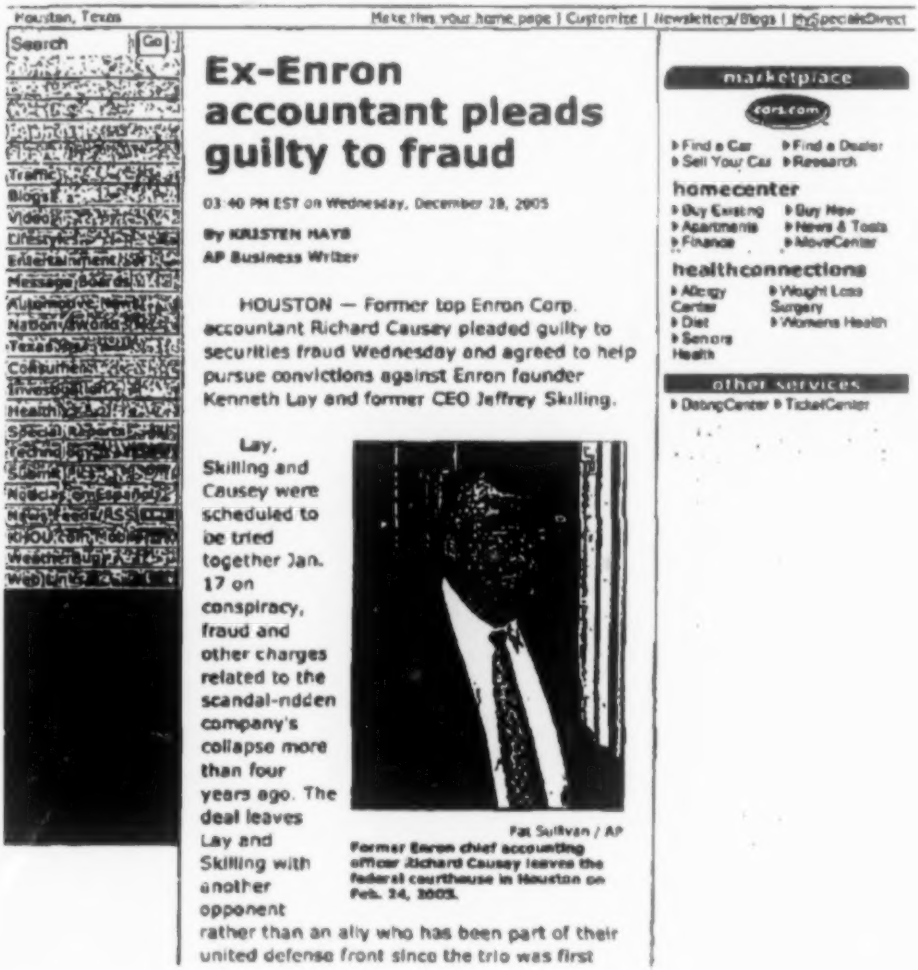
SR3:1403.



[illegible] DESPERATE DEFENDANTS

**FROGGY GOES A-COURTING:** Did once powerful Enron CEO Jeff Skilling really need pollsters to prove Houstonians want a change of venue for him worse than he does?

SR3:3149 (*Houston Chronicle*, Nov. 10, 2004).


Houston, Texas
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Investigations
Health
Special Reports
Technology
Science
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News & Tools
Finance
MoveCenter
healthconnections
Allergy Center
Weight Loss Surgery
Diet
Womens Health
Seniors Health
other services
DatingCenter
TicketCenter

# Ex-Enron accountant pleads guilty to fraud

03:40 PM EST on Wednesday, December 28, 2005

**By KRISTEN HAYS**
**AP Business Writer**

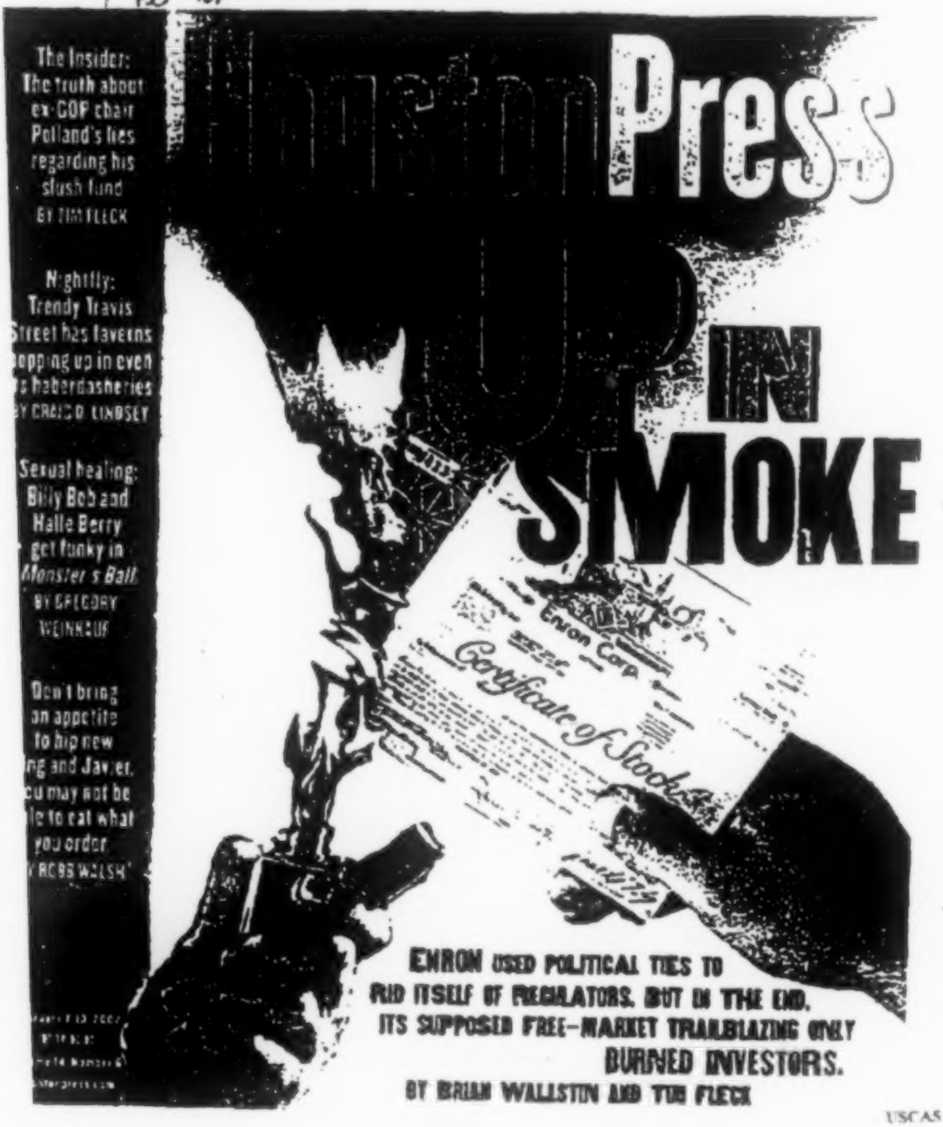
HOUSTON — Former top Enron Corp. accountant Richard Causey pleaded guilty to securities fraud Wednesday and agreed to help pursue convictions against Enron founder Kenneth Lay and former CEO Jeffrey Skilling.

Pat Sullivan / AP
**Former Enron chief accounting officer Richard Causey leaves the federal courthouse in Houston on Feb. 24, 2005.**

Lay, Skilling and Causey were scheduled to be tried together Jan. 17 on conspiracy, fraud and other charges related to the scandal-ridden company's collapse more than four years ago. The deal leaves Lay and Skilling with another opponent rather than an ally who has been part of their united defense front since the trio was first

R:12270 (*Houston Chronicle*, Dec. 28, 2005).

T Per top



Houston Press

UP IN SMOKE

The Insider:
The truth about
ex-GOP chair
Polland's lies
regarding his
slush fund
BY TIM FLECK

Nightlfy:
Trendy Travis
Street has taverns
opping up in even
s haberdasheries
Y CRAIG D. LINDSEY

Sexual healing:
Billy Bob and
Halle Berry
get funky in
*Monster's Ball*
BY GREGORY
WEINKAUF

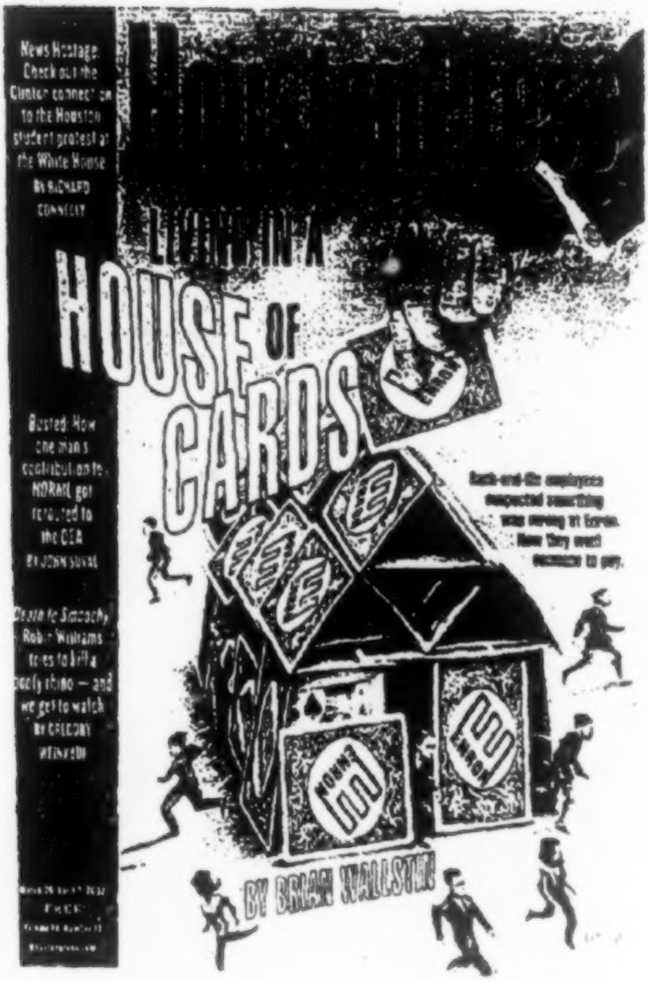
Don't bring
an appetite
to hip new
ng and Javier.
u may not be
le to eat what
you order.
Y ROBB WALSH

FREE

ENRON USED POLITICAL TIES TO
RID ITSELF OF REGULATORS. BUT IN THE END,
ITS SUPPOSED FREE-MARKET TRAILBLAZING ONLY
BURNED INVESTORS.
BY BRIAN WALLSTIN AND TIM FLECK

USCAS 643

SR3:643.



News Hostage: Check out the Clinton connection to the Houston student protest at the White House
BY RICHARD CONNELLY

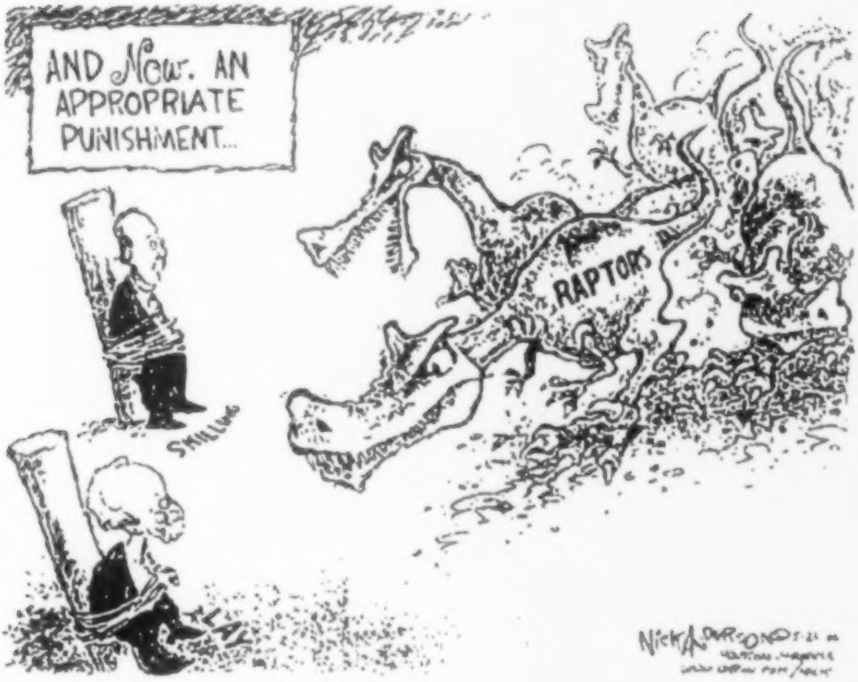
Busted: How one man's contribution to NORML got rerouted to the DEA
BY JOHN SUVAL

*Death to Smoochy!* Robin Williams tries to kill a goofy rhino — and we get to watch
BY GREGORY WEINKAUF

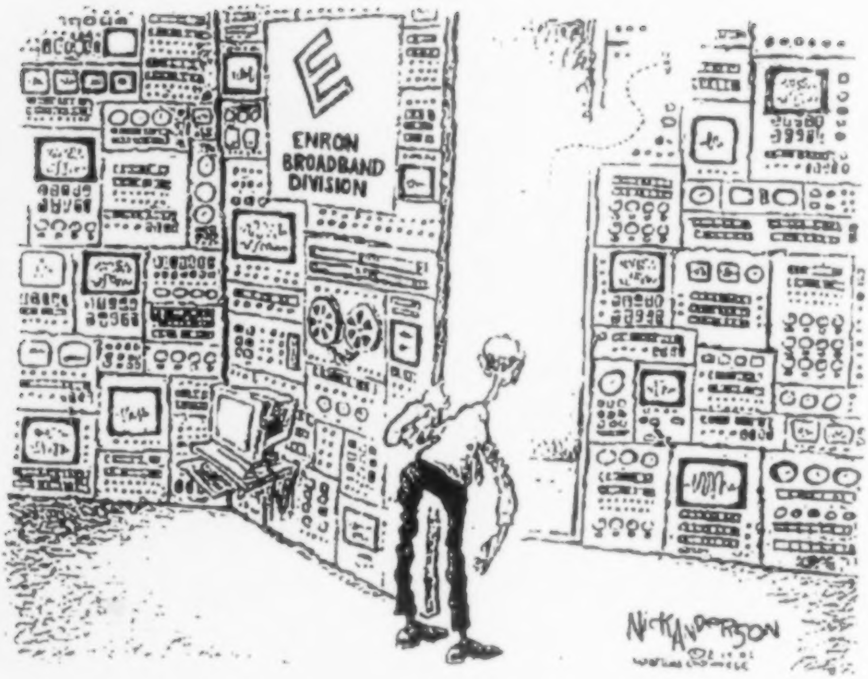
Rank-and-file employees suspected something was wrong at Enron. Now they want someone to pay.

LIVING IN A
HOUSE OF CARDS
ENRON
BY BRIAN WALLSTIN

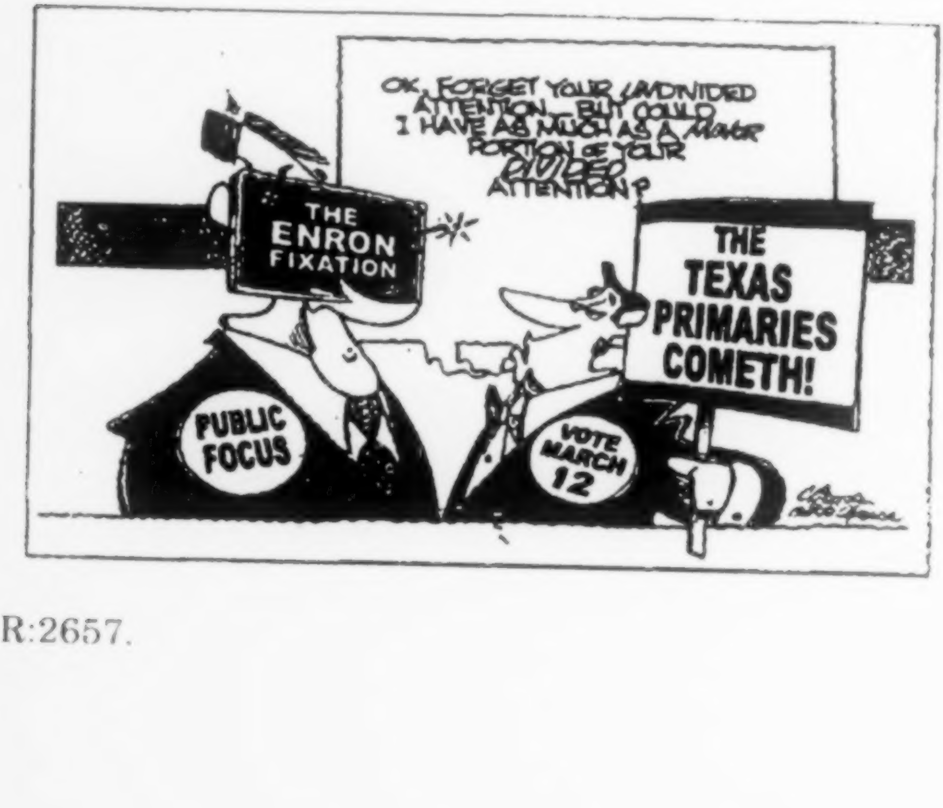
**Political Cartoons:**


AND NOW: AN APPROPRIATE PUNISHMENT...
RAPTORS
SKILLING
LAY
Nick Anderson

*Houston Chronicle*, May 25, 2006.

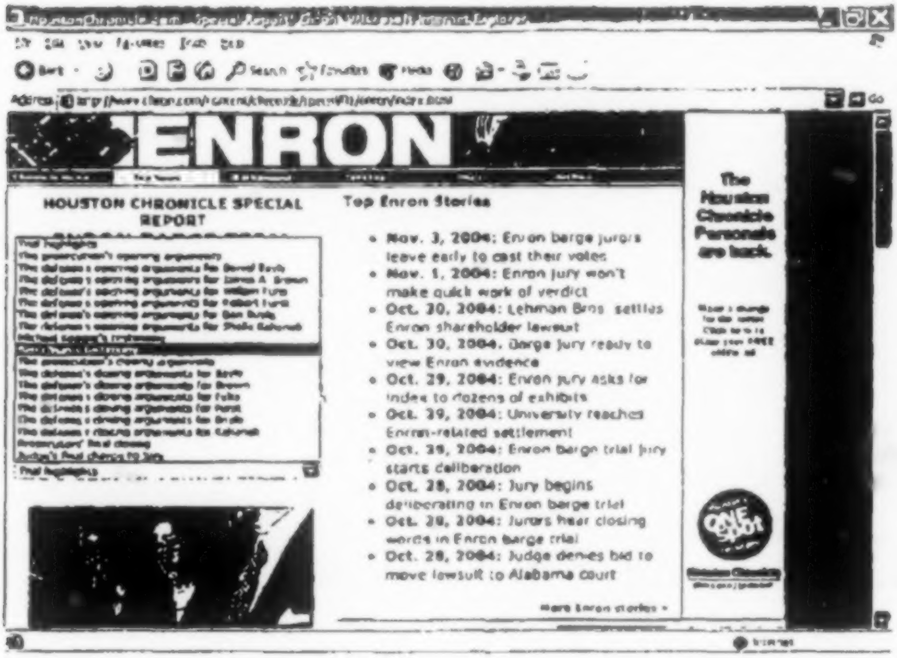

ENRON
BROADBAND
DIVISION
NICK ANDERSON

*Houston Chronicle*, Feb. 19, 2006.


OK, FORGET YOUR UNDIVIDED ATTENTION... BUT COULD I HAVE AS MUCH AS A MINOR PORTION OF YOUR DIVIDED ATTENTION?
THE ENRON FIXATION
THE TEXAS PRIMARIES COMETH!
PUBLIC FOCUS
VOTE MARCH 12

R:2657.

## Sample of *Houston Chronicle's* Enron Homepage as of November 3, 2004:


ENRON
HOUSTON CHRONICLE SPECIAL REPORT
The Houston Chronicle Personals are back.

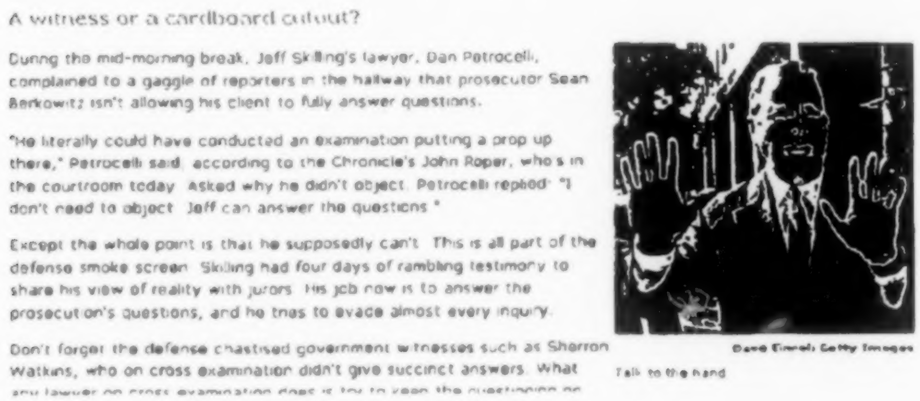
**Top Enron Stories**

- **Nov. 3, 2004:** Enron barge jurors leave early to cast their votes
- **Nov. 1, 2004:** Enron jury won't make quick work of verdict
- **Oct. 30, 2004:** Lehman Bros. settles Enron shareholder lawsuit
- **Oct. 30, 2004:** Barge jury ready to view Enron evidence
- **Oct. 29, 2004:** Enron jury asks for index to dozens of exhibits
- **Oct. 29, 2004:** University reaches Enron-related settlement
- **Oct. 29, 2004:** Enron barge trial jury starts deliberation
- **Oct. 28, 2004:** Jury begins deliberating in Enron barge trial
- **Oct. 28, 2004:** Jurors hear closing words in Enron barge trial
- **Oct. 28, 2004:** Judge denies bid to move lawsuit to Alabama court

more Enron stories »

R:2517.

# Sample of *Houston Chronicle* Blog Coverage During Trial:



A witness or a cardboard cutout?

During the mid-morning break, Jeff Skilling's lawyer, Dan Petrocelli, complained to a gaggle of reporters in the hallway that prosecutor Sean Berkowitz isn't allowing his client to fully answer questions.

"He literally could have conducted an examination putting a prop up there," Petrocelli said, according to the Chronicle's John Roper, who's in the courtroom today. Asked why he didn't object, Petrocelli replied: "I don't need to object. Jeff can answer the questions."

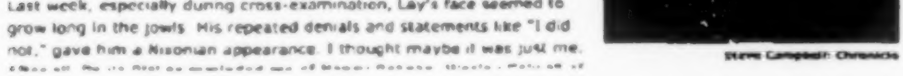
Except the whole point is that he supposedly can't. This is all part of the defense smoke screen. Skilling had four days of rambling testimony to share his view of reality with jurors. His job now is to answer the prosecution's questions, and he tries to evade almost every inquiry.

Don't forget the defense chastised government witnesses such as Sherron Watkins, who on cross examination didn't give succinct answers. What

Dave Einsel: Getty Images

Talk to the hand

http://blogs.chron.com/lorensteffy/2006/04/a_witness_or_a_1.html (*Houston Chronicle* Blog, Apr. 19, 2006).



**The Nixonian Ken Lay**

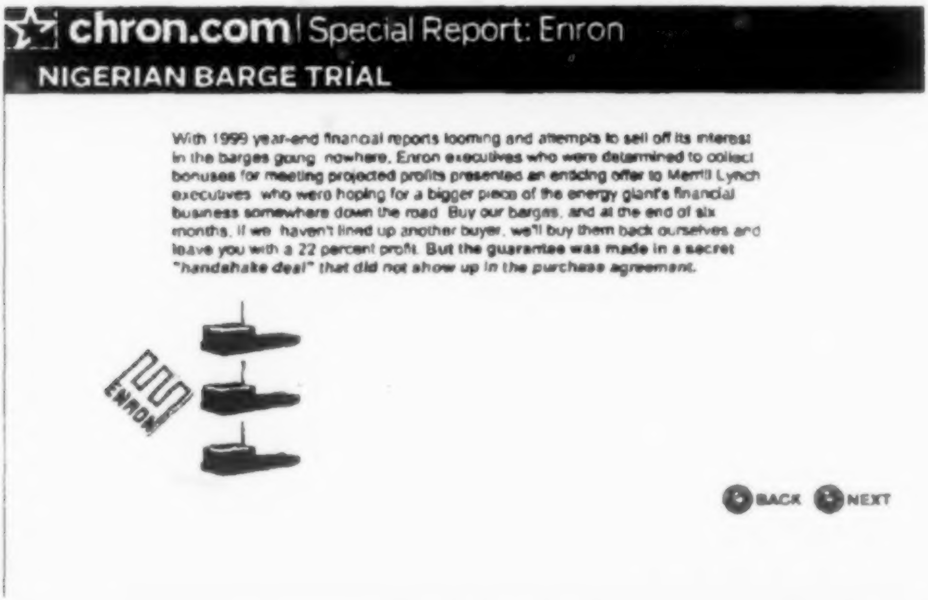
One of the more surprising elements of this trial has been Ken Lay's demeanor on the stand. The affable grandpa has been supplanted by an angry and arrogant bully, a chief executive who doesn't seem to understand he's not in charge any more. Most of us watching the trial expected vitriol from Jeff Skilling, but it was Lay who proved the more difficult and combative witness. Which has led to some odd comparisons with Richard Nixon, not exactly the image that a white-collar defendant wants to conjure.

Last week, especially during cross-examination, Lay's face seemed to grow long in the jowls. His repeated denials and statements like "I did not," gave him a Nixonian appearance. I thought maybe it was just me.

Steve Campbell: Chronicle

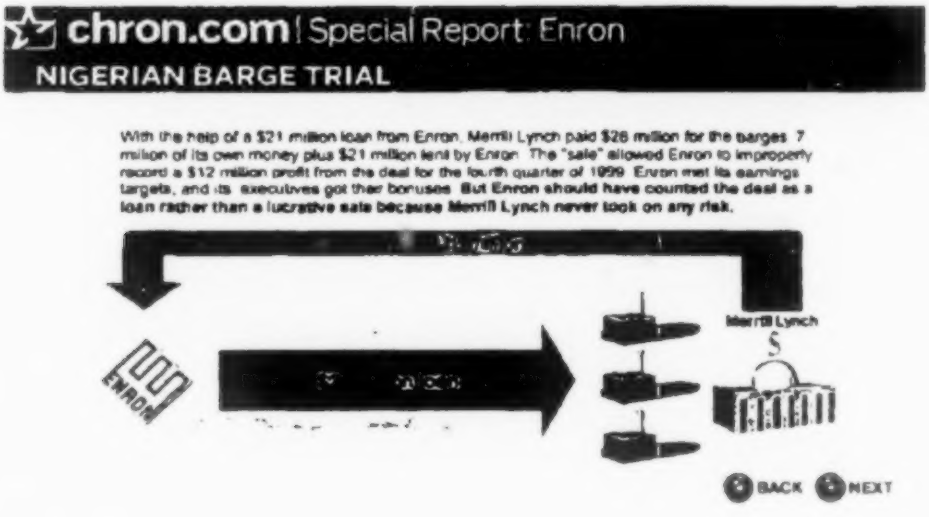
R:40281 (*Houston Chronicle* Blog, May 2, 2006).

## *Houston Chronicle* Teaching Tool Explaining Why Nigerian Barges Were Allegedly A Fraud (on *Chronicle* website throughout trial):



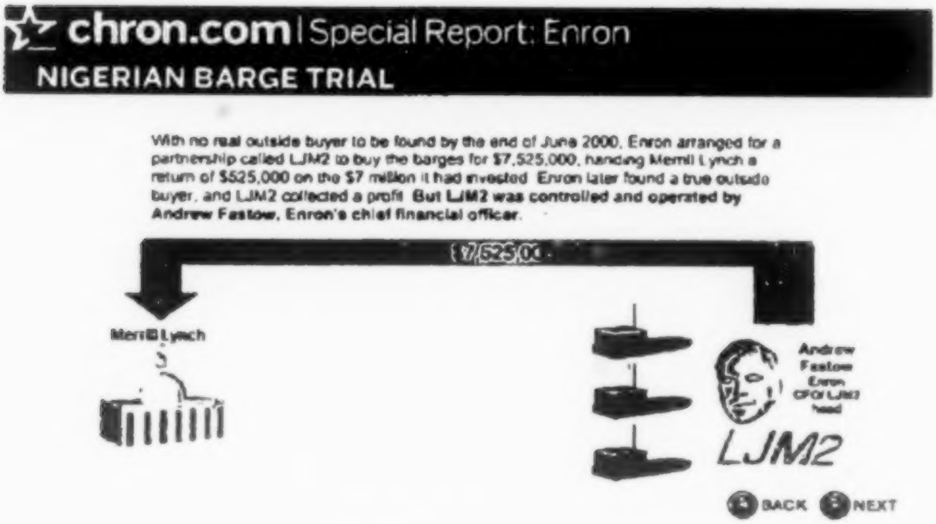
chron.com | Special Report: Enron
NIGERIAN BARGE TRIAL
ENRON
BACK
NEXT

With 1999 year-end financial reports looming and attempts to sell off its interest in the barges going nowhere, Enron executives who were determined to collect bonuses for meeting projected profits presented an enticing offer to Merrill Lynch executives who were hoping for a bigger piece of the energy giant's financial business somewhere down the road. Buy our barges, and at the end of six months, if we haven't lined up another buyer, we'll buy them back ourselves and leave you with a 22 percent profit. **But the guarantee was made in a secret *"handshake deal" that did not show up in the purchase agreement.***



chron.com | Special Report: Enron
NIGERIAN BARGE TRIAL
Merrill Lynch
$
ENRON
BACK
NEXT

With the help of a $21 million loan from Enron, Merrill Lynch paid $28 million for the barges: 7 million of its own money plus $21 million lent by Enron. The "sale" allowed Enron to improperly record a $12 million profit from the deal for the fourth quarter of 1999. Enron met its earnings targets, and its executives got their bonuses. **But Enron should have counted the deal as a loan rather than a lucrative sale because Merrill Lynch never took on any risk.**



chron.com | Special Report: Enron

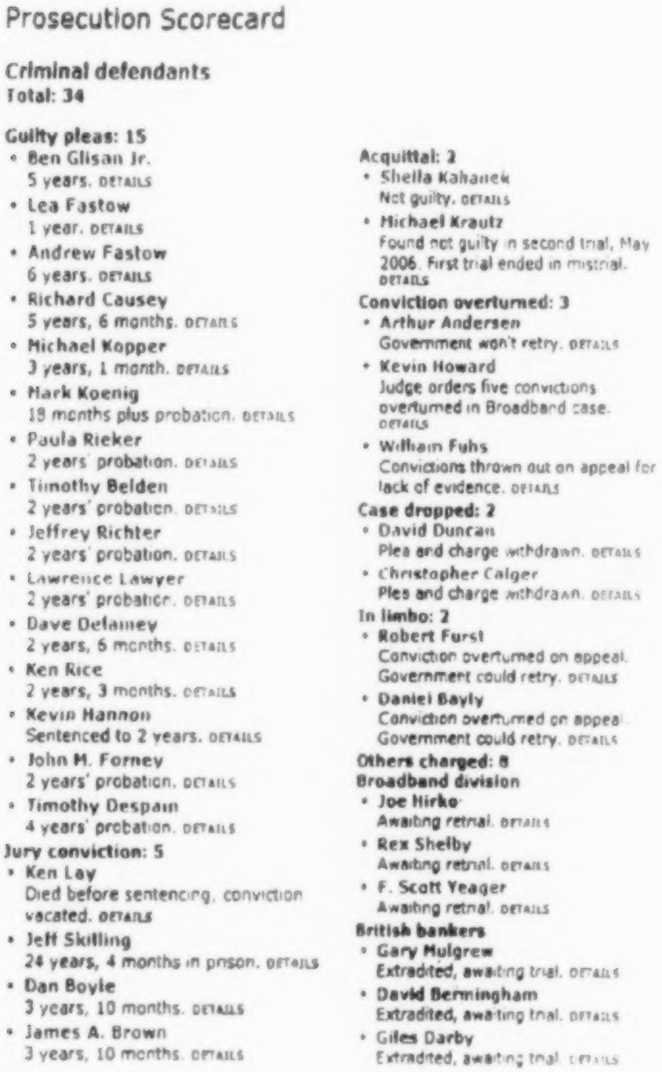
NIGERIAN BARGE TRIAL

With no real outside buyer to be found by the end of June 2000, Enron arranged for a partnership called LJM2 to buy the barges for $7,525,000, handing Merrill Lynch a return of $525,000 on the $7 million it had invested. Enron later found a true outside buyer, and LJM2 collected a profit. **But LJM2 was controlled and operated by Andrew Fastow, Enron's chief financial officer.**

$7,525,00
Merrill Lynch
Andrew Fastow
Enron CFO/ LJM2 head
LJM2
BACK
NEXT

http://www.chron.com/news/specials/enron/ (*Houston Chronicle*)

## Scorecard on the *Houston Chronicle* Homepage Tracking Enron Task Force's Wins and Losses:



### Prosecution Scorecard

**Criminal defendants**
**Total: 34**

**Guilty pleas: 15**

- **Ben Glisan Jr.**
  5 years. DETAILS
- **Lea Fastow**
  1 year. DETAILS
- **Andrew Fastow**
  6 years. DETAILS
- **Richard Causey**
  5 years, 6 months. DETAILS
- **Michael Kopper**
  3 years, 1 month. DETAILS
- **Mark Koenig**
  18 months plus probation. DETAILS
- **Paula Rieker**
  2 years' probation. DETAILS
- **Timothy Belden**
  2 years' probation. DETAILS
- **Jeffrey Richter**
  2 years' probation. DETAILS
- **Lawrence Lawyer**
  2 years' probation. DETAILS
- **Dave Delainey**
  2 years, 6 months. DETAILS
- **Ken Rice**
  2 years, 3 months. DETAILS
- **Kevin Hannon**
  Sentenced to 2 years. DETAILS
- **John M. Forney**
  2 years' probation. DETAILS
- **Timothy Despain**
  4 years' probation. DETAILS

**Jury conviction: 5**

- **Ken Lay**
  Died before sentencing, conviction vacated. DETAILS
- **Jeff Skilling**
  24 years, 4 months in prison. DETAILS
- **Dan Boyle**
  3 years, 10 months. DETAILS
- **James A. Brown**
  3 years, 10 months. DETAILS

**Acquittal: 2**

- **Sheila Kahanek**
  Not guilty. DETAILS
- **Michael Krautz**
  Found not guilty in second trial, May 2006. First trial ended in mistrial. DETAILS

**Conviction overturned: 3**

- **Arthur Andersen**
  Government won't retry. DETAILS
- **Kevin Howard**
  Judge orders five convictions overturned in Broadband case. DETAILS
- **William Fuhs**
  Convictions thrown out on appeal for lack of evidence. DETAILS

**Case dropped: 2**

- **David Duncan**
  Plea and charge withdrawn. DETAILS
- **Christopher Calger**
  Plea and charge withdrawn. DETAILS

**In limbo: 2**

- **Robert Furst**
  Conviction overturned on appeal. Government could retry. DETAILS
- **Daniel Bayly**
  Conviction overturned on appeal. Government could retry. DETAILS

**Others charged: 8**
**Broadband division**

- **Joe Hirko**
  Awaiting retrial. DETAILS
- **Rex Shelby**
  Awaiting retrial. DETAILS
- **F. Scott Yeager**
  Awaiting retrial. DETAILS

**British bankers**

- **Gary Mulgrew**
  Extradited, awaiting trial. DETAILS
- **David Bermingham**
  Extradited, awaiting trial. DETAILS
- **Giles Darby**
  Extradited, awaiting trial. DETAILS

http://www.chron.com/news/specials/enron/ (*Houston Chronicle*).

# APPENDIX E

## RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution provides in relevant part:

> No person shall ... be deprived of life, liberty, or property, without due process of law ....

U.S. Const. amend. V.

Section 1343 of Title 18 of the United States Code provides in relevant part:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. § 1343.

Section 1346 of Title 18 of the United States Code provides:

> For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

18 U.S.C. § 1346.

# OPPOSITION BRIEF

Supreme Court, U.S.
FILED
AUG 12 2009
OFFICE OF THE CLERK

No. 08-1394

# In the Supreme Court of the United States

JEFFREY K. SKILLING, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE FIFTH CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

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*(202) 514-2217*

## QUESTIONS PRESENTED

1. Whether, to convict petitioner of conspiring to commit wire fraud by depriving his employer and its shareholders of the right to petitioner's honest services (18 U.S.C. 1343 and 1346), the government was required to prove that petitioner intended to obtain some private gain, and, if not, whether 18 U.S.C. 1346 is unconstitutionally vague.

2. Whether the court of appeals correctly held that petitioner was tried by an impartial jury despite any prejudicial pretrial publicity about the case.

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# In the Supreme Court of the United States

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No. 08-1394

JEFFREY K. SKILLING, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE FIFTH CIRCUIT*

---

## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-135a) is reported at 554 F.3d 529.

### JURISDICTION

The judgment of the court of appeals was entered on January 6, 2009. A petition for rehearing was denied on February 10, 2009 (Pet. App. 136a-139a). The petition for a writ of certiorari was filed on May 11, 2009. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### STATEMENT

Following a jury trial in the United States District Court for the Southern District of Texas, petitioner was convicted on one count of conspiracy to commit securities fraud and wire fraud, in violation of 18 U.S.C. 371

(Count 1); 12 counts of securities fraud, in violation of 15 U.S.C. 78j(b) and 78ff and 17 C.F.R. 240.10b-5 (Counts 2, 14, 16-20, 22-26); five counts of making false representations to auditors, in violation of 15 U.S.C. 78m(a), 78m(b)(2), and 78ff (Counts 31-32, 34-36); and one count of insider trading, in violation of 15 U.S.C. 78j(b) and 78ff and 17 C.F.R. 240.10b-5 (Count 51). He was sentenced to a total of 292 months of imprisonment, to be followed by three years of supervised release, and ordered to pay $45 million in restitution. The court of appeals affirmed petitioner's convictions but vacated his sentence and remanded for resentencing. Pet. App. 1a-135a.

1. Petitioner was the president, chief operating officer, and, for several months in 2001, the chief executive officer of Enron Corporation, a large publicly traded energy company based in Houston. The evidence at trial showed that between 1999 and 2001, petitioner and other Enron executives conspired to deceive Enron's shareholders, auditors, federal regulators, and the investing public about the company's financial condition and performance. Petitioner and his co-conspirators artificially inflated Enron's share price by reporting false earnings for the company and concealing large losses. In meetings and conference calls with investors, petitioner made false representations about the success of Enron's businesses. To ensure that Enron met or exceeded its announced earnings targets, petitioner authorized the manipulation of the company's financial accounting to conceal losses and falsely inflate earnings. Petitioner also entered into secret side deals with entities created by Enron's chief financial officer, Andrew Fastow, in order to hide losses at Enron. Pet. App. 2a-17a; Gov't C.A. Br. 6-62.

Shortly after petitioner resigned from Enron in August 2001, he sold 500,000 shares of Enron stock. At the time of the sale, petitioner knew that Enron had mounting debt and cash-flow problems and that several Enron components were suffering ongoing substantial losses that had not been disclosed publicly. Enron filed for bankruptcy four months later. Pet. App. 17a-18a; Gov't C.A. Br. 62-65.

2. a. On July 7, 2004, a federal grand jury in the Southern District of Texas returned a superseding indictment charging petitioner and Enron executives Kenneth Lay and Richard Causey with conspiracy and multiple counts of securities fraud, wire fraud, making false representations to auditors, and insider trading.[1] Pet. App. 18a; Gov't C.A. Br. 4-5. Count 1 of the indictment alleged that petitioner conspired with Lay and Causey to commit securities fraud, to commit wire fraud through a scheme to obtain money or property, and to commit wire fraud through a scheme to deprive Enron and its shareholders of the conspirators' honest services. Pet. App. 19a-20a; Superseding Indictment 36-39.

b. On November 8, 2004, petitioner and his co-defendants moved for a change of venue. Citing the "devastating" effects of Enron's collapse on the Houston area, the defendants contended that inflammatory pretrial publicity and pervasive community prejudice against former Enron executives would prevent a fair trial in Houston. Gov't C.A. Br. 136-137; Mem. in Supp. of Joint Mot. to Transfer Venue 1-4.

The district court denied the transfer motion. Mem. and Order (Jan. 19, 2005). After conducting a "[m]eticulous review of all the evidence and arguments presented by defendants," the court found that the media materials they submitted "failed to raise a presumption of prejudice." *Id.* at 7. In particular, the court found that the defendants had identified only "isolated incidents of intemperate commentary" in news coverage, and that "for the most part, the reporting appears to have been objective and unemotional" and had a "fact-based tone." *Id.* at 12. The court also rejected the defendants' claim that pervasive community prejudice warranted a presumption that the jury would not be fair and impartial. The court summarized data from surveys of the local jury pool relied on by the defendants and concluded that they had not shown "a reasonable likelihood that the court will be unable to impanel an impartial jury despite widespread knowledge of the case." *Id.* at 17-21. The court concluded that "defendants' evidence is insufficient to show that prejudicial publicity about this case has so saturated the local populace that defendants are unlikely to receive a fair trial from an impartial jury." *Id.* at 17.

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[1] The government dismissed the wire fraud counts before trial and dismissed three additional counts against petitioner at the close of its case. Gov't C.A. Br. 5.

Before trial, the court sent out 14-page jury questionnaires, asking prospective jurors about their relationship to Enron or to anyone affected by the company's collapse, their opinions about Enron and the government's investigation, their sources of information about the case, the periodicals they read, and the Internet sites they visited. The questionnaires also asked whether recipients were angry at Enron or had an opinion about the defendants or the defendants' guilt. Pet. App. 62a; Gov't C.A. Br. 139-140.

On January 4, 2006, after Causey entered a guilty plea, petitioner and Lay renewed their motion for a change of venue, arguing that the jury questionnaires showed that potential jurors were biased and that publicity generated by Causey's plea further tainted the jury pool. Defs.' Renewed Mot. for Change of Venue 1-2. The district court denied the motion, finding that the defendants had not "establish[ed] that pretrial publicity and/or community prejudice raise a presumption of inherent jury prejudice in this case." Order (Jan. 23, 2006) at 1. The court reiterated that the jury questionnaires and its "voir dire examination of the jury panel provide adequate safeguards to defendants and will result in the selection of a fair and impartial jury." *Id.* at 1-2.

After reviewing the completed questionnaires, the parties agreed to excuse 119 potential jurors. Pet. App. 62a. The court addressed the remaining 164 venire members, explaining the importance of an impartial jury and inquiring whether "any of you have doubts about your ability to conscientiously and fairly follow these very important rules." *Ibid.* After excusing two prospective jurors who indicated that they could not be fair, the court again emphasized that the case was not about the collapse of Enron and that serving as a juror was not about looking "to right a wrong or to provide remedies for those who suffered from the collapse of Enron." *Ibid.* The court admonished the jurors that they could not "seek vengeance against Enron's former officers because of some wrongdoing they believe Enron or its officers may have committed," and that anyone who had such an attitude could not "be a fair and impartial juror." *Id.* at 62a-63a. The court then questioned the venire members about whether they knew any of a long list of persons involved in the case and questioned each juror who identified any connection about the nature of the relationship. *Id.* at 63a. Finally, the court questioned each member of the venire individually about his or her responses to the jury questionnaire and exposure to pretrial publicity and also allowed defense counsel to question the prospective jurors. *Ibid.*

The court granted three challenges for cause by the defendants and denied five of their challenges for cause. Gov't C.A. Br. 147. One juror petitioner had challenged for cause sat on the jury. Pet. App. 65a. After the jury was selected, defense counsel objected to six of the other jurors, stating that if additional peremptory challenges had been granted, they would have used them to strike those jurors. 1/30/06 Sealed Tr. 3.

c. On May 25, 2006, after a four-month trial, petitioner was convicted of conspiracy, 12 counts of securities fraud, five counts of making false representations to auditors, and one count of insider trading. Pet. App. 19a; Gov't C.A. Br. 5. The jury acquitted petitioner on nine counts of insider trading. Pet. App. 19a.

3. The court of appeals affirmed petitioner's convictions, but remanded for resentencing. Pet. App. 1a-135a. On appeal, petitioner argued, among other things, that his conspiracy conviction was flawed because one of its objects was legally invalid. In particular, he contended that the honest services theory was "legally insufficient," *id.* at 21a, because his conduct was designed to benefit Enron, "not to promote [petitioner's] interests at Enron's expense." Pet. C.A. Br. 60-71. Petitioner relied on *United States* v. *Brown*, 459 F.3d 509, 519-523 (2006), cert. denied, 550 U.S. 933 (2007), in which the Fifth Circuit held that employees who commit fraudulent acts to further corporate goals imposed by their superiors have not committed honest services fraud. The court of appeals rejected petitioner's claim, holding that "[t]he elements of honest-services wire fraud appli-

cable here are: * * * a material breach of a fiduciary duty imposed under state law * * * that results in a detriment to the employer." Pet. App. 29a. Such a detriment exists, the court stated, when the employee withholds information "that he had reason to believe would lead a reasonable employer to change its conduct." *Ibid.* The court concluded that "the jury was entitled to convict [petitioner] of conspiracy to commit honest-services wire fraud on these elements." *Ibid.* The court explained that *Brown* "creat[ed] an exception" for cases in which "the employer specifically directs the fraudulent conduct," but found that petitioner "never alleged that he engaged in his conduct at the explicit direction of anyone." *Id.* at 28a-29a.

Petitioner also argued that pretrial publicity and community prejudice required a presumption that any jury empaneled in Houston would not be fair and impartial, and that the jury that actually sat in his case was biased. Pet. C.A. Br. 121-173. The court of appeals agreed with petitioner that "inflammatory and pervasive" media coverage and the widespread effects of Enron's collapse on "countless people in the Houston area" were sufficient to raise a presumption of jury prejudice. Pet. App. 54a-60a. The court concluded, however, that the district court's "proper and thorough" voir dire "more than mitigated any effects of this prejudice." *Id.* at 62a-63a, 68a. The court noted that the district court, after "prescreening veniremembers based upon their responses" to an "extensive questionnaire," had conducted "searching" questioning of the prospective jurors, "requiring more than just the veniremembers' statements that he or she could be fair." *Id.* at 62a-63a. The court also found that the government "met its burden of demonstrating the impartiality of the empaneled jury." *Id.* at 63a-68a. Observing that petitioner "failed to challenge for cause all but one of the jurors who actually sat," *id.* at 64a, the court affirmed the district court's finding that Juror 11, whom petitioner did challenge for cause, could be fair. *Id.* at 65a-67a (noting Juror 11's statements during voir dire that he had "no idea" as to petitioner's guilt and "would have no problem" telling a co-worker who had formerly worked at Enron that the jury had acquitted petitioner because the government failed to prove its case); see 1/30/06 Tr. 49-65.

The court remanded for resentencing, agreeing with petitioner that the district court erred in applying a four-level enhancement, under Sentencing Guidelines § 2F1.1(b)(8)(A) (2000), for substantially jeopardizing the safety and soundness of a financial institution. Pet. App. 131a-135a.

Petitioner filed a petition for rehearing en banc, arguing, as relevant here, that a conviction for honest services fraud requires "proof that the defendant committed wrongful acts *for his own personal gain* and *not* to further his employer's objectives." Pet. Reh'g Pet. 2 (emphasis in original). Petitioner also contended that he had not waived his objection to any seated juror and that the government failed to rebut the presumption of jury prejudice. *Id.* at 12-20. The court of appeals denied rehearing without opinion. Pet. App. 136a-138a.

## ARGUMENT

Petitioner contends that the honest-services object of his conspiracy conviction was legally invalid because the jury was not required to find that he acted for private gain. Pet. 21, 23. He also contends that review is warranted because, he asserts, prejudicial pretrial publicity created an irrebuttable presumption that he was denied an impartial jury. Pet. 33. Those claims do not warrant review, particularly because this case is in an interlocutory posture. In the alternative, the petition for certiorari should be held on the first issue for *Black* v. *United States*, 129 S. Ct. 2379 (2009) (No. 08-876), but in all other respects denied.

1. This Court's review is unwarranted at this time because this case is in an interlocutory posture. The court of appeals vacated petitioner's sentence and remanded for resentencing. Pet. App. 135a. The district court has indefinitely postponed that proceeding, however, because petitioner has indicated that he intends to file a new trial motion pursuant to Fed. R. Crim. P. 33(b)(1). Order (Apr. 29, 2009). That motion is expected to renew arguments that petitioner advanced on appeal but that the Fifth Circuit declined to address in the first instance. Pet. App. 91a-92a, 96a-97a n.73, 102a (explaining that petitioner must file a Rule 33 motion for a new trial to permit the district court to address certain issues). In particular, petitioner has alleged that the government withheld exculpatory evidence regarding a number of matters in violation of *Brady* v. *Maryland*, 373 U.S. 83 (1963). After several extensions of the briefing schedule, petitioner's Rule 33 motion is now due on September 9, 2009, pursuant to the most recent extension request filed on August 3, 2009. Order (Aug. 4, 2009).

The interests of judicial economy would be best served by denying review in this Court while petitioner completes his challenge to his conviction on separate grounds in the district court. Following the resolution of petitioner's Rule 33 motion and the conclusion of any other proceedings that may prove necessary, petitioner, if he remains convicted, will be resentenced. He can then, after appellate arguments, raise his current claims —together with any additional claims that arise in the district court—in a single petition for a writ of certiorari seeking review of the final judgment against him. See *Major League Baseball Players Ass'n* v. *Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam) (Court "ha[s] authority to consider questions determined in earlier stages of the litigation where certiorari is sought from" most recent judgment). The interlocutory posture of the case "of itself alone furnishe[s] sufficient ground for the denial" of the petition. *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); accord *Virginia Military Inst.* v. *United States*, 508 U.S. 946 (1993) (Scalia, J., respecting the denial of the petition). See generally Robert L. Stern et al., *Supreme Court Practice* § 4.18, at 258 n.59 (8th ed. 2002) (noting that the Court routinely denies interlocutory petitions in criminal cases).

2. Petitioner contends (Pet. 17-21) that this Court's review is warranted to resolve a conflict among the courts of appeals on whether a conviction for honest services fraud under 18 U.S.C. 1346 requires proof that the defendant intended by his conduct to obtain "private gain." Petitioner also contends (Pet. 23-26) that, absent some limiting construction, Section 1346 is unconstitutionally vague. Those questions do not merit review in this case because petitioner would not benefit even if his contentions were correct. The indictment against petitioner alleged that his conspiracy offense had three objects: to commit securities fraud, to commit wire fraud based on a deprivation of money property, and to commit wire fraud based on a deprivation of honest services. Pet. App. 19a-20a. In the court of appeals, petitioner

challenged only the honest-services theory; he did not challenge the legal theory underlying the securities fraud convictions. This Court has held that error on an alternative legal theory underlying a general verdict is subject to harmless-error analysis. *Hedgpeth* v. *Pulido*, 129 S. Ct. 530 (2008) (per curiam). Although the court of appeals seemingly confined *Hedgpeth* to cases on collateral review, Pet. App., 20a-21a n.10, this Court's harmless-error reasoning extends to the direct-review context as well, as petitioner appears to recognize. Pet. 14. In this case, petitioner was convicted on 12 separate substantive counts of securities fraud that corresponded to the securities-fraud object of the conspiracy. Those counts were based on petitioner's own conduct and were supported by overwhelming evidence. See Gov't C.A. Br. 6-60, 92-102. Accordingly, the jury's verdict on the conspiracy count would have been the same even without the honest services theory. Any error in that theory was therefore harmless beyond a reasonable doubt. *Neder* v. *United States*, 527 U.S. 1, 17 (1999).

Alternatively, if the Court does not deny the petition outright, the petition should be held on this issue for *Black*, *supra*. That case concerns the elements of private sector honest services fraud under Section 1346, including whether limitations on that offense are necessary to avoid constitutional infirmities.[2] The petitioner in *Black* has challenged the jury instructions in his case on the ground that they did not require the jury to find that the alleged scheme to defraud contemplated "economic or other property harm" to the party deprived of honest services. Pet. Br. at i, *Black, supra* (No. 08-876). In the course of addressing that contention, this Court is likely to define the elements of honest-services fraud and thus to clarify the reach of Section 1346. Indeed, petitioner has filed an amicus curiae brief in *Black* arguing that he has an interest in the case "because it presents a distinct but related question concerning the scope of honest-services fraud under § 1346" and "[t]he result and reasoning of the Court's decision in th[at] case could directly affect his chances of obtaining the reversal of his conviction." Amicus Br. of Jeffrey K. Skilling at 2, *Black, supra* (No. 08-876). While petitioner also maintains that the Court should grant review in this case to address the "private gain" issue, the Court need not do so before it has resolved *Black*. And if that decision sheds light on the proper analysis of this case, the Court's customary practice would be to remand to allow the court of appeals to apply the new decision. Accordingly, if this Court does not deny review of this case for the reasons stated above, the Court should hold the petition for certiorari pending the decision in *Black* and then dispose of the petition as appropriate in light of the Court's resolution of that case.

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[2] This Court has also granted certiorari in *Weyhrauch v. United States*, No. 08-1196 (June 29, 2009), which presents the question whether, to convict a state official under the federal mail fraud statute for depriving the public of its right to the defendant's honest services through the non-disclosure of material information, the government must prove that the defendant violated a disclosure duty imposed by state law. It does not appear that petitioner's case would be affected by

3. Petitioner also contends (Pet. 26-37) that the court of appeals erred in rejecting his claim that he was deprived of an impartial jury by prejudicial pretrial publicity. He contends that the court of appeals' finding

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*Weyhrauch* because breach of a state law duty was established in this case. Pet. App. 29a.

that pretrial publicity and the widespread effects of Enron's collapse warranted a presumption of jury prejudice required "automatic reversal" of his convictions, without consideration of whether an impartial jury was in fact empaneled. He also argues that the courts below failed to require the government to prove beyond a reasonable doubt that the jurors who actually sat were impartial. Petitioner's contentions are without merit, and they do not warrant further review.

a. This is not an appropriate case to review whether an appellate court's application of a presumption of jury prejudice requires automatic reversal because, as the government argued below, no such presumption was warranted here. "[P]retrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial." *Nebraska Press Ass'n* v. *Stuart*, 427 U.S. 539, 554 (1976). A defendant who contends that prejudice from pretrial publicity should be presumed has an "extremely high" burden, *United States* v. *McVeigh*, 153 F.3d 1166, 1182 (10th Cir. 1998), cert. denied, 526 U.S. 1007 (1999), because a presumption of prejudice is only "'rarely' applicable and is reserved for an 'extreme situation,'" *United States* v. *Campa*, 459 F.3d 1121, 1143 (11th Cir. 2006) (en banc) (quoting *Mayola* v. *Alabama*, 623 F.2d 992, 997 (5th Cir. 1980), cert. denied, 451 U.S. 913 (1981)), cert. denied, 129 S. Ct. 2790 (2009); see *United States* v. *Childress*, 58 F.3d 693, 706 (D.C. Cir. 1995) (presumption is "reserved for only the most egregious cases"), cert. denied, 516 U.S. 1098 (1996). See also *Dobbert* v. *Florida*, 432 U.S. 282, 303 (1977) ("Unfairness of constitutional magnitude" will not be presumed "in the absence of a 'trial atmosphere . . . utterly corrupted by press coverage.'") (quoting *Murphy* v. *Florida*, 421 U.S. 794, 798 (1975)).

As the district court found, petitioner failed to show that pretrial publicity and community prejudice required a presumption that an impartial jury could not be empaneled in Houston. Petitioner was tried in the Houston Division of the Southern District of Texas, which consists of 13 counties and in 2004 had a population of at least 4.5 million people. Gov't C.A. Br. 152; see *Mu'Min* v. *Virginia*, 500 U.S. 415, 429 (1991) (evaluation of effect of pretrial publicity requires consideration of "the kind of community in which the coverage took place"); *United States* v. *De La Vega*, 913 F.2d 861, 865 (11th Cir. 1990) (330 news articles submitted by defendants could not have created inflamed atmosphere sufficient to presume prejudice in community of 1.8 million people), cert. denied, 500 U.S. 916 (1991). As this Court has explained, a "relevant" consideration in evaluating presumed prejudice claims is "[t]he length to which the trial court must go in order to select jurors who appear to be impartial." *Murphy*, 421 U.S. at 802-803. Thus, "[i]n a community where most veniremen will admit to a disqualifying prejudice, the reliability of the others' protestations may be drawn into question." *Id.* at 803. In *Irvin* v. *Dowd*, 366 U.S. 717, 727 (1961), for example, almost 90% of the venire harbored some opinion about the defendant's guilt and 62% of the 430 members of the venire were dismissed for cause. In *Patton* v. *Yount*, 467 U.S. 1025 (1984), this Court refused to presume prejudice even though "77% [of those on the venire] admitted they would carry an opinion into the jury box," *id.* at 1029, and 121 out of 163 venire members were dismissed for cause, 96 of whom testified that they had firm opinions about the case, *id.* at 1044-1045 (Stevens, J., dissenting). Unlike *Irvin* and *Patton*, in which the large majority of prospective jurors thought the defendants were guilty, responses to the questionnaire the court distributed to the jury pool in this case showed that more than 60% of prospective jurors had not formed any opinion about petitioner's guilt. Gov't C.A. Br. 154.

Voir dire of the jury panel confirmed that most prospective jurors did not hold disqualifying opinions about petitioner. During individual voir dire, the court asked virtually every potential juror about his or her exposure to publicity concerning Enron's collapse and this case. Approximately 37 of the 46 potential jurors questioned stated that they had limited exposure to publicity about Enron and the defendants, had not paid attention to the publicity, or did not recall anything significant about the publicity. Gov't C.A. Br. 160; see *id.* at 142-143 (21 potential venire members, including ten who sat on the jury, told the court that they did not follow the news about Enron; many stated that they were not interested in details of the news coverage because they had not been directly affected); *id.* at 141-142 (approximately 22 prospective jurors, including nine who sat on the jury, did not subscribe to the *Houston Chronicle* or read it infrequently). Three other potential jurors were excused for cause on the defendants' motion or by joint consent without any inquiry into whether they had been exposed to publicity. *Id.* at 160. Of those venire members who recalled hearing news about Enron, most said that they did not remember very much or did not hear anything that made them think petitioner was guilty or that would interfere with their ability to decide the case on the evidence. *Id.* at 144-146. A jury pool in which more than 85% of the individuals questioned said that they had no significant exposure to pretrial publicity is not a panel that is fatally "saturated" with pretrial publicity. Cf. Pet. App. 55a.

The cases in which this Court has found a presumption of jury prejudice bear no resemblance to the facts of this case. In *Rideau* v. *Louisiana*, 373 U.S. 723 (1963), a 20-minute film in which the defendant confessed to kidnapping and murdering a bank employee (after inquisition in his jail cell without counsel by the county sheriff) was aired three times on local television, before respective audiences of 24,000, 53,000, and 20,000 viewers, in a community of only 150,000 people. *Id.* at 723-727. The Court held that due process "required a trial before a jury drawn from a community of people who had not seen and heard Rideau's televised 'interview.'" *Id.* at 727. In *Estes* v. *Texas*, 381 U.S. 532 (1965), the Court relied on the "rule announced in *Rideau*," *id.* at 550, that "the televising of a defendant in the act of confessing of a crime was inherently invalid under the Due Process Clause," *id.* at 538, to hold that the defendant was denied due process by the "televising and broadcasting of his trial." *Id.* at 535. Finally, in *Sheppard* v. *Maxwell*, 384 U.S. 333 (1966), the media not only reported numerous prejudicial rumors and accusations regarding the defendant, who was accused of murdering his pregnant wife, but was also allowed to invade the courtroom and interfere with the trial itself. *Id.* at 342-345, 356-357. The Court found that "bedlam reigned at the courthouse during the trial and newsmen took over practically the entire courtroom," and that the trial court failed to take adequate steps to avoid the "carnival atmosphere at trial." *Id.* at 355, 358-363; see *Murphy*, 421 U.S. at 799 (proceedings in *Estes* and *Sheppard* "were entirely lacking in the solemnity and sobriety to which a defendant is entitled").

This case does not involve the considerations that led the Court to presume jury prejudice in *Rideau*, *Estes*, and *Sheppard*. Petitioner was charged with a corporate fraud that the district court found was "neither heinous nor sensational," Mem. and Order 10 (Jan. 19, 2005); the pretrial publicity did not include accounts of his confession or prior convictions; and the news media did not televise the proceedings, invade the courtroom, or create a "carnival atmosphere at trial." *Sheppard*, 384 U.S. at 358.

b. Even if a presumption of prejudice were warranted in this case, petitioner is incorrect in contending that conducting a criminal trial in a venue where pretrial publicity or other circumstances raise such a presumption requires automatic reversal of the defendant's conviction, without regard to whether the jurors who actually sat at trial were impartial. As relevant here, a rule of automatic reversal applies "only in a very limited class of cases," namely those in which the defect asserted "deprive[s] [the] defendant[] of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence." *Neder*, 527 U.S. at 8-9; *Johnson* v. *United States*, 520 U.S. 461, 468-469 (1997). An impartial adjudicator is an element of fundamental fairness. See *Rose* v. *Clark*, 478 U.S. 570, 579 (1986) ("[I]f the defendant had counsel and was tried by an impartial adjudicator, there is a strong presumption that any other errors that may have occurred are subject to harmless-error analysis."). But a presumption of prejudice is not alone sufficient to require automatic reversal. Rather, when actual impartiality is shown, the conviction should be affirmed. Cf. *Remmer* v. *United States*, 347 U.S. 227, 229 (1954) (apparent attempt to bribe a juror "is, for obvious reasons, deemed presumptively prejudicial," but "[t]he presumption is not conclusive" and may be rebutted if the government shows after a hearing that "such contact with the juror was harmless to the defendant").[3]

Pretrial publicity and community reaction may give rise to a presumption of jury prejudice, but the trial is not fundamentally unfair or unreliable when no biased juror actually sits, because the defendant has not been deprived of an impartial jury. See *Lockhart* v. *McCree*, 476 U.S. 162, 178 (1986) (an impartial jury is one that "will conscientiously apply the law and find the facts") (citation omitted); cf. *Rivera* v. *Illinois*, 129 S. Ct. 1446, 1450 (2009) ("[i]f all seated jurors are qualified and unbiased," erroneous denial of defendant's peremptory challenge does not warrant reversal). Here, petitioner was tried under the correct standard of proof, with the assistance of counsel, and before an unbiased judge and a jury which both courts below found was impartial. Any error in the district court's refusal to order a change of venue did not rise to the level of a fundamental defect warranting automatic reversal.

Contrary to petitioner's claim (Pet. 29-30), this Court has not held that jurors' statements during voir dire are categorically irrelevant in determining whether a presumption of jury prejudice requires reversal. In both *Estes* and *Sheppard*, the Court found prejudice based largely on media interference with the trial itself after the jury had been empaneled. *Estes*, 381 U.S. at 535-538; *Sheppard*, 384 U.S. at 343-349, 353-356, 358-359. In

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[3] Petitioner contends that when a presumption of prejudice arises, the effects on individual jurors cannot be ascertained and thus automatic reversal is required. Pet. 29-31 (citing, *inter alia*, *United States* v. *Gonzalez-Lopez*, 548 U.S. 140, 149 n.4 (2006)). But while the effects of actual bias on a factfinder cannot be ascertained and thus require automatic reversal, the question whether prejudicial influences create actual bias can be ascertained. See, e.g., *Remmer*, 347 U.S. at 229-230.

*Rideau*, the Court found that pretrial publicity required reversal "without pausing to examine a particularized transcript of the voir dire," 373 U.S. at 727, but the publicity in that case was so extreme, exposing prospective jurors "repeatedly and in depth to the spectacle of Rideau personally confessing in detail to the crimes with which he was later to be charged," that the Court found the confession effectively constituted Rideau's "trial—at which he pleaded guilty to murder"—and rendered the ensuing judicial proceedings a "kangaroo court." *Id.* at 726.

Petitioner also contends (Pet. 30-33) that the court of appeals' conclusion that a presumption of jury prejudice may be rebutted by the voir dire conflicts with decisions of other federal courts of appeals and state courts of last resort. Most of the cases petitioner cites did not apply a presumption of jury prejudice, however, and their statements about the potential significance of such a presumption are therefore dicta. Thus, in both of the Third Circuit decisions petitioner cites—*Riley* v. *Taylor*, 277 F.3d 261 (2001), and *Flamer* v. *Delaware*, 68 F.3d 736, 754 (1995), cert. denied, 516 U.S. 1088 (1996)--the court simply quoted from, but did not apply, an earlier decision that had posited (but not found) an extreme situation involving a "trial atmosphere" so "utterly corrupt" that the defendant could not receive a fair hearing. *Rock* v. *Zimmerman*, 959 F.3d 1237, 1252-1253 (3d Cir.), cert. denied, 505 U.S. 1222 (1992). In *United States* v. *Higgs*, 353 F.2d 281 (2003), cert. denied, 543 U.S. 999 (2004), the Fourth Circuit addressed the standards governing a motion for pre-trial change of venue but did not state, much less hold, that a presumption of prejudice arising from pretrial publicity requires automatic reversal of a conviction. See also *United States* v. *Baker*, 925

F.2d 728, 732 (4th Cir. 1991) (stating that if "the publicity is so inherently prejudicial that trial proceedings must be presumed to be tainted[,] * * * a motion for a change of venue should be granted before jury selection begins"). And in *United States* v. *McVeigh*, 153 F.3d 1166 (1998), cert. denied, 526 U.S. 1007 (1999), the Tenth Circuit adverted to a hypothetical set of circumstances in which "publicity in essence displaced the judicial process, thereby denying the defendant his constitutional right to a fair trial" as a matter of law, but the court noted that, "despite the proliferation of the news media and its technology, the Supreme Court has not found a single case of presumed prejudice in this country since * * * *Sheppard*." *Id.* at 1182.

The only published federal decision petitioner cites in which presumed prejudice was actually at issue is *Daniels* v. *Woodford*, 428 F.3d 1181 (9th Cir. 2005), cert. denied, 550 U.S. 968 (2007). There, the pretrial publicity identified the defendant as having killed two police officers and recounted his prior offenses, and the Ninth Circuit reversed only after considering both the nature and extent of the publicity and the results of the voir dire. *Id.* at 1210-1212; cf. *United States* v. *Maad*, 75 Fed. Appx. 599, 600 (9th Cir. 2003) (unpublished) (district court abused its discretion in denying motion for change of venue, in light of "confluence of extraordinary and unique events," which included vandalism of defendant's business shortly after the September 11 attacks, initial outpouring of support from the community, subsequent announcement that defendant was suspected of vandalizing his own business, and "negative reaction" against defendant).

The state court decisions petitioner cites that applied a presumption of jury prejudice do not establish that petitioner would have been "entitled * * * to a new trial as a matter of law" in these jurisdictions, as he contends (Pet. 33) (emphasis omitted). In *State* v. *Clark*, 442 So. 2d 1129 (La. 1983), the court held that the defendant was entitled to a change of venue for his retrial for murder, citing the "massive media coverage" of the defendant's televised news conference while awaiting execution after his conviction at an earlier trial, in which he admitted his part in the armed robbery that led to the murder and insisted that he would rather be executed than serve a life sentence. *Id*. at 1131, 1134-1135. Because the defendant in *Clark* had not been retried, *id*. at 1131, the court had no occasion to consider whether the pretrial publicity would have required reversal of his conviction. In *Johnson* v. *State*, 476 So. 2d 1195 (Miss. 1985), the court found it "evident" that a presumption of jury prejudice "may be rebutted during voir dire." *Id*. at 1211; see *Gray* v. *State*, 728 So. 2d 36, 66 (Miss. 1998) (presumption "can * * * be rebutted if the State can prove from voir dire that the trial court impaneled a fair and impartial jury"), cert. denied, 526 U.S. 1055 (1999). The court reasoned that the presumption might, however, "become[], in effect, irrebuttable" based on a "combination" of circumstances, including not only prejudicial pretrial publicity but also "the capital nature of the offense," the presence of "crowds threatening violence to the accused," and charges of "mass or serial murders" or a crime "committed by a black person upon a white victim." *Johnson*, 476 So. 2d at 1213-1215. In *Ruiz* v. *State*, 582 S.W.2d 915 (Ark. 1979), the court presumed prejudice where the defendants were tried for the capital murder of two people in the county where the trial was held; pretrial publicity disclosed that the defendants had escaped from state prison, where they were serving sentences for robbery and murder, and were also suspected of three other murders in Louisiana and Oklahoma; and the jury panel "included friends or acquaintances of one or both of the murdered men." *Id.* at 917, 920-921. After finding that the trial court's denial of the defendants' motion for change of venue "constituted prejudicial error," the court went on to "examine the record to determine * * * whether they did in fact receive a trial by a completely impartial jury." *Id.* at 921. The court described the voir dire of each juror who sat at the defendants' trial, finding that "several of them had formed an opinion that the [defendants] were guilty or would require proof of their innocence," and concluded that "the seating of this jury constituted reversible error." *Id.* at 922-924. Finally, in *Commonwealth* v. *Frazier*, 369 A.2d 1224 (Pa. 1977), the court reversed the defendant's conviction for abducting and murdering an 11-year-old girl, citing news reports that quoted the defendant's confession to police and detailed his prior criminal record, which "reached the homes of practically every potential juror" in the rural county of 100,000 residents. *Id.* at 1225-1229.

c. The court of appeals in this case correctly concluded that any presumption of prejudice was rebutted by the district court's "exemplary" voir dire, which ensured that petitioner received a fair trial by an impartial jury. See Pet. App. 62a-68a. The jury's acquittal of petitioner on nine of the counts with which he was charged demonstrates its impartiality. Petitioner does not cite any case in which this Court has held that a conclusive presumption of prejudice was required where the jury returned a verdict of not guilty on some charges.

Petitioner contends, however (Pet. 34) that the court of appeals erred in deferring to the district court's determinations that prospective jurors could be impartial. He maintains that the district court should have been required to "start[] from an assumption that every potential juror was prejudiced" and should have conducted a "more probing" voir dire. This Court has made clear that a trial judge's determination of juror bias "is essentially one of credibility, and therefore largely one of demeanor," and for that reason is "entitled * * * to special deference." *Patton*, 467 U.S. at 1038 & n.14 (internal quotation marks omitted). Accordingly, "[a] trial court's finding of juror impartiality may 'be overturned only for manifest error.'" *Mu'Min* v. *Virginia*, 500 U.S. at 428 (quoting *Patton*, 467 U.S. at 1031). In addition, "[b]ecause the obligation to impanel an impartial jury lies in the first instance with the trial judge, and because he must rely largely on his immediate perceptions, federal judges have been accorded ample discretion in determining how best to conduct the voir dire." *Rosales-Lopez* v. *United States*, 451 U.S. 182, 188 (1981) (plurality); see *Mu'Min*, 500 U.S. at 424, 427 (in both federal and state cases, "the trial court retains great latitude in deciding what questions should be asked on voir dire"; "[p]articularly with respect to pretrial publicity, * * * this reliance on the judgment of the trial court makes good sense"); *Aldridge* v. *United States*, 283 U.S. 308, 310 (1931) (trial court "ha[s] a broad discretion as to the questions to be asked" of prospective jurors).

In this case, as the court of appeals found, the district court conducted a "searching" voir dire, questioning prospective jurors individually about their exposure to pretrial publicity and responses to an extensive questionnaire concerning their opinions about Enron, their connections to the company or to anyone affected by its bankruptcy, and their sources of information about the case. Pet. App. 62a-63a; see Gov't C.A. Br. 140-146. Petitioner asserts generally that more extensive questioning was "necessary to fully explore each juror's influences and potential biases," Pet. 34, but he does not suggest any additional lines of inquiry that the court failed to pursue in examining the prospective jurors.[4] Petitioner's fact-specific challenge to the sufficiency of the voir dire warrants no further review.

Petitioner also contends (Pet. 34-35) that the court of appeals did not require the government to prove beyond a reasonable doubt that no seated juror was biased. As the court of appeals explained, petitioner declined to challenge for cause 11 of the 12 jurors who convicted him. Pet. App. 64a-65a & n.53 (noting that the "only juror who sat that [petitioner] had challenged for cause was Juror 11"); see 1/30/06 Tr. 64, 75, 102, 114, 160, 204-205, 229. Petitioner contends that the court failed to require the government to prove beyond a reasonable doubt that Juror 11 was impartial, citing the juror's statements during voir dire that corporate CEOs are "greedy" and "walk a line that stretches sometimes the legality of something," and that he worked with a former Enron employee who lost money in his retirement plan. See Pet. App. 65a-66a.

As the court of appeals observed, however, Juror 11 also stated that he had "no idea" as to the defendants' guilt; that he would have "no problem" telling his co-worker that the government failed to prove its case; that he did not "get into details" of the Enron coverage; that he did not believe everything he read in the *Chronicle*; that the defendants "earned their salaries"; and that "greedy" did "not necessarily" mean "illegal," agreeing that "greed and ambition * * * are the same thing" and that he could "start this case with a clean slate that would require the government to prove its case." Pet. App. 65a-67a; 1/30/06 Tr. 58-64. Such "ambiguous and at times contradictory" responses to voir dire examination are not unusual and do not establish juror bias, even in a "highly publicized criminal case"; rather, "it is [the trial] judge who is best suited to determine competency to serve impartially." *Patton*, 467 U.S. at 1039; see *Murphy*, 421 U.S. at 800 (juror's expression of a "'preconceived notion as to the guilt or innocence of an accused'" does not demonstrate juror's impartiality; "'It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.'") (quoting *Irvin*, 366 U.S. at 723). The district court observed Juror 11's demeanor and responses to questions and found that he could be impartial, 1/30/06 Tr. 65, and the court of appeals affirmed that finding, holding that the government "met its burden of showing that the actual jury that convicted [petitioner] was impartial." Pet. App. 63a-68a. Petitioner's disagreement with that finding by both courts below does not warrant review by this Court.

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[4] Petitioner asserts (Pet. 34) that the district court improperly denied him "individual voir dire," but, as the court of appeals found (Pet. App. 63a n.52), the court only twice limited questioning of prospective jurors by counsel for petitioner's co-defendant. The defense attorneys questioned 27 prospective jurors and declined to question the other 19 members of the venire. *Ibid.*; Gov't C.A. Br. 163-164.

## CONCLUSION

The petition for a writ of certiorari should be denied. In the alternative, the petition should be held pending this Court's decision in *Black* v. *United States*, No. 08-876, and then disposed of as appropriate in light of this Court's decision in that case.

Respectfully submitted.

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# REPLY
# BRIEF

Supreme Court, U.S.
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No. 08-1394

IN THE

# Supreme Court of the United States

JEFFREY K. SKILLING,
*Petitioner*,

v.

UNITED STATES OF AMERICA,
*Respondent*.

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

## REPLY BRIEF FOR PETITIONER

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## REPLY BRIEF FOR PETITIONER

The Government's opposition all but concedes the case for certiorari on the honest-services fraud question. And while the Government more vigorously opposes review of the juror prejudice issue, it identifies no valid ground for denying certiorari on that question either.

1. On the first question, the Government's opposition is most telling for what it does *not* say:

- It does not deny the clear circuit conflict on the important question whether 18 U.S.C. § 1346 requires proof that the defendant's conduct was intended to achieve private gain. Pet. 18-20, 22-23.
- It does not deny that the decision below directly implicates that conflict because Skilling did not act for private gain. Pet. 21.
- It does not deny that the Fifth Circuit honest-services fraud holding was wrong on the merits. Pet. 20, 23-26.

While tacitly conceding that the decision below incorrectly resolves an important question of law that has squarely divided the circuits—circumstances that would warrant acquiescence to certiorari in almost any other case—the Government declines to acquiesce. It instead offers two makeweight arguments against review.

a. The Government first argues that review should be denied as "interlocutory" because the Fifth Circuit remanded this case for resentencing and Skilling intends to file a Rule 33 motion for a new trial based on violations of *Brady v. Maryland*, 373 U.S. 83 (1963). Opp. 9. The Government notes that this Court "routinely denies interlocutory petitions in criminal cases" (Opp. 10), but that is true only when review is sought *before* a defendant has been convicted. The Court "routinely" *grants* petitions where, as here, the defendant's conviction has been affirmed and only ancillary matters, such as resentencing, remain to be determined. *See, e.g.*, *Corley v. U.S.*, 129 S. Ct. 1558 (2009); *Begay v. U.S.*, 128 S. Ct. 1581 (2008); *Zedner v. U.S.*, 547 U.S. 489 (2006); *Eberhart v. U.S.*, 546 U.S. 12 (2005). The Court even grants review in *pre*-conviction appeals when circumstances warrant. *See* Robert L. Stern et al., *Supreme Court Practice* 258-59 n.59 (8th ed. 2002). The Court just did so in *Weyhrauch v. U.S.*, 129 S. Ct. 2863 (2009), to address another circuit conflict concerning § 1346—over a much stronger "judicial economy" objection than the meager one asserted here. Br. Opp., *Weyhrauch v. U.S.*, No. 08-1196, at 11-13; *see Yeager v. U.S.*, 129 S. Ct. 2360 (2009) (reviewing denial of motion to dismiss indictment).

Skilling's Rule 33 motion does not justify a different course. That motion will implicate no issues relevant to the Fifth Circuit's honest-services fraud holding. There is no reason the Court should decline to resolve a circuit conflict on an important question of federal criminal law merely because the defendant intends to challenge his conviction, post-appeal, on wholly unrelated grounds. If this Court were to deny review of convictions because they might be challenged on other grounds post-appeal under Rule 33, or under 28 U.S.C. § 2255, this Court would rarely review criminal cases on direct appeal.

The "interests of judicial economy" (Opp. 9) would not be served by delaying review of the honest-services fraud issue. Most important, this Court would lose the benefit of addressing together the three major, interrelated controversies concerning § 1346. *See infra* at 5-6. And delay would seriously risk the absolute *worst*-case scenario from the perspective of judicial economy: if Skilling's *Brady* motion prevails, and he is tried again and convicted under the Fifth Circuit's flawed honest-services holding, a *third* trial will be required if this Court finally reviews and rejects the Fifth Circuit's holding. By contrast, if the Court resolves the honest-services issue now, any further proceedings below will be subject to that guidance, and their finality will be much more certain.

Finally, judicial economy is not the only relevant interest. The Government's proposal for delay assumes the possibility that the Fifth Circuit's honest-services holding is incorrect—the Government simply suggests delaying review of the error because another potentially certworthy issue might arise, in theory, from the Rule 33 *Brady* proceedings. But if the Fifth Circuit's honest-services holding is wrong, then Skilling has *already* been imprisoned unjustly for almost three years. His liberty should not be a matter of convenience. If the Fifth Circuit's holding is wrong, the Court should say so now.

b. The Government next contends that review is unwarranted because any error in prosecuting Skilling under § 1346 was harmless. Opp. 10-11. The conspiracy count for which Skilling was convicted had three possible objects, including honest-services fraud and securities fraud. Pet. 2, 14; Pet. App. 19a-20a. The Government baldly asserts that because Skilling was also convicted on 12 substantive counts of securities fraud, "the jury's verdict on the conspiracy count would have been the same even without the honest services theory." Opp. 11.

The Government's *ipse dixit* harmlessness claim does not justify denying review. Both the district court and Judge Higginbotham *rejected* the Government's position that the jury necessarily would have convicted Skilling for conspiracy absent the honest-services fraud charge. Pet. 14. Because the Fifth Circuit upheld the Government's honest-services fraud theory, it never reached the Government's alternative harmlessness argument. Pet. App. 29a. When an appellate court does not reach a Government contention that an otherwise certworthy error of law might be harmless, the Court's "normal practice" is to grant review, resolve the substantive issue, and then remand for the lower court to address harmlessness. *Neder v. U.S.*, 527 U.S. 1, 25 (1999); *see Norfolk S. Ry. Co. v. Sorrell*, 549 U.S. 158, 172 (2007); *Carella v. California*, 491 U.S. 263, 266-67 (1989). The Government offers no reason to depart from the normal practice here.

The Government's harmlessness argument is also manifestly wrong. The 12 securities fraud counts cited by the Government were all tied directly to the conspiracy count by a *Pinkerton* instruction, which allowed the jury to convict Skilling for conspiracy to commit honest-services fraud, and then use that conspiracy finding to convict him vicariously for securities fraud committed by his co-conspirators. Pet. App. 29a n.18. Given the trial record, that is almost certainly what the jury actually did.[1] But it is not

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[1] Contrary to the Government's starkly unsupported assertion that the securities fraud counts were based on Skilling's "own conduct and were supported by overwhelming evidence" (Opp. 11), a count-by-count review of the securities fraud convictions demonstrates that for every count, the evidence con-

Skilling's burden to prove that the jury relied on the honest-services fraud object to find him vicariously guilty of securities fraud; it is the Government's burden to *refute* that possibility, and to do so *beyond any reasonable doubt*. The Government's empty assertion, bereft of record analysis, that the jury surely *must* have found Skilling independently guilty of securities fraud—despite the glaring weakness of its independent securities-fraud case against Skilling and despite its express reliance at trial on vicarious liability—falls far short of that standard.

c. Finally, as an alternative to denying review, the Government recommends holding the petition pending the decision in *Black v. U.S*, No. 08-876, because that decision is likely to "clarify the reach" of § 1346. Opp. 12. But the same would have been true in *Weyrhauch*, yet the Court granted that petition, presumably because it presented a distinct but related issue meriting review in its own right.

The same is true here. Beyond asserting the truism that the Court "need not" address the private gain issue here before addressing *Black*'s economic harm issue (Opp. 12), the Government does not even try to explain why the Court *should not* address the two proposed rules in connection with each other. If anything, the grants in *Black* and *Weyhrauch* only strengthen the case for immediate review of the private gain issue. *See* Skilling *Black* Amicus Br. 19-21. Reviewing Skilling's case now would not only

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cerning Skilling's personal liability was weak to nonexistent, and that it was at least as likely, and typically much *more* likely, that the jury found that *others* committed the charged acts, holding Skilling vicariously liable for those acts through the conspiracy conviction based on honest-services fraud. Skilling C.A. Reply Br. 33-37, 39-45.

ensure resolution of all three major judicial controversies over the interpretation of § 1346, but would also allow the Court to consider how the economic harm rule proposed in *Black* compares with, and relates to, the private gain requirement at issue here. *Id.*

2. The Government's arguments against review of the second question presented—whether a presumption of juror prejudice arising from widespread community bias is rebuttable—are more vociferous, but they are no more meritorious.

a. The Government first contends that the Fifth Circuit erred in holding that a presumption of prejudice was warranted at all. Opp. 13. The Government notes that "only" 40% of all prospective jurors went so far as to openly admit, in response to one question on the questionnaire, that they had already prejudged Skilling's guilt. Opp. 15. But a broader review of prospective jurors' responses shows that 80% *expressed negative views* about Skilling and Lay or about the role they played in Enron's collapse, or expressed anger about Enron. Pet. 8. This Court has never suggested that there is some minimum percentage of prospective jurors who must admit an actual prejudgment of guilt to create a presumption of prejudice. That approach would contradict the very premise of the presumption, *viz.*, when bias or adverse publicity pervades the overall community, prospective jurors may hide, or simply fail to recognize, their own prejudice. *Cf. Smith v. Phillips,* 455 U.S. 209, 221-22 (1982) (O'Connor, J., concurring).

The Fifth Circuit's recognition that a presumption arose here does not conflict with *Patton v. Yount*, 467 U.S. 1025 (1984). Opp. 14. In *Patton*, the Court found no presumption even though many in the jury pool had formed a view of the defendant's guilt, but only because the inflammatory publicity had occurred four years before trial and community passions had since subsided. *Id.* at 1032. The opposite is true here. Pet. App. 56a-60a.

The Government similarly errs in relying on statements from 37 potential jurors that they had limited exposure to publicity. Opp. 15. Even limited exposure to inflammatory publicity can be dangerously prejudicial. And the Houston community's bias arose not only from inflammatory publicity, but also from the "sheer number of victims" of Enron's collapse, the seismic effects of which rippled through the entire Houston economy. Pet. App. 58a. Unsurprisingly, almost every prospective juror cited by the Government as having experienced limited exposure to adverse publicity nevertheless made explicit statements evidencing bias against Skilling. *See* Skilling C.A. Reply Br. App'x 3.

The Government contends that the facts here are not precisely comparable to cases where the Court has presumed prejudice, citing the district court's finding that the corporate fraud charged was neither "heinous nor sensational." Opp. 16-17. But Skilling and Lay would not have been compared to Al Qaeda, Hitler, Satan, child molesters, and rapists (Pet. 6) if their crimes were not perceived as heinous and sensational. Nor does it matter that there was no pretrial confession or media circus inside the courtroom. Opp. 17. This Court's precedents do not recite a rigid checklist of required prejudice factors; they instead enunciate and apply a general principle fundamental to any reasonable conception of due process: when the community from which jurors are drawn is pervaded with adverse publicity, and is broadly victimized by the defendants' alleged conduct, potential jurors may harbor undisclosed or unrecognized biases that voir dire cannot expose. *See Patton*, 467 U.S. at 1031 (presumption arises when community bias is so pervasive "that the jurors' claims that they can be impartial should not be believed"). Contrary to the Government's suggestion, this principle does not apply only in small towns, where virtually every resident sees virtually every local newspaper article or news broadcast. To the contrary, courts for decades have recognized the presumption in circumstances analogous to the instant case. Skilling C.A. Reply 88 & n.33.

b. The real issue here is not whether a presumption of prejudice arose, but what the consequences of that presumption are. Like the Fifth and Eleventh Circuits, the Government contends that the prosecution is entitled to rebut the presumption by proving through voir dire that each juror was not actually affected by the community bias giving rise to the presumption. Opp. 18-19. But in *Rideau v. Louisiana*, 373 U.S. 723, 727 (1963), the Court reversed the conviction based on a presumption of prejudice "without pausing to examine a particularized transcript of the *voir dire* examination of the members of the jury." And in *Estes v. Texas*, 381 U.S. 532, 543-44 (1965) and *Sheppard v. Maxwell*, 384 U.S. 333, 363 (1966), the Court also reversed convictions without considering whether the presumption had been rebutted by voir dire. As those precedents demonstrate, when a defendant has been tried by a jury "exposed to prejudicial publicity," this Court "ha[s] *required reversal* of the conviction because *the effect of the violation cannot be ascertained*," through voir dire or other means. *U.S. v. Gonzalez-Lopez*, 548 U.S. 140, 149 n.4 (2006) (emphasis added; quotation omitted).[2]

c. The Government next argues that the decision below does not conflict with decisions from other circuits. The Government dismisses the Third and Tenth Circuit decisions in *Riley v. Taylor*, 277 F.3d 261, 299 (3d Cir. 2001), and *U.S. v. McVeigh*, 153 F.3d 1166, 1182 (10th Cir. 1998), as "dicta" because, while they clearly hold that a presumption of prejudice is irrebuttable because voir dire cannot be trusted, the decisions did not find the presumption applicable on their facts. Opp. 19-20. The precedential force of a decision, however, is not limited to its specific result; it includes the legal standards a court applies in reaching the result. *Seminole Tribe v. Florida*, 517 U.S. 44, 66-67 (1996).

It is likewise irrelevant that *U.S. v. Higgs*, 353 F.3d 281, 307 (4th Cir. 2003), addressed the issue in the venue-transfer context. Opp. 19. *Higgs*' holding that a presumption of prejudice requires that venue be transferred necessarily means that if venue is *not* transferred, the conviction must be reversed.

Nor can the decision below be reconciled with *Daniels v. Woodford*, 428 F.3d 1181 (9th Cir. 2005), merely because the court did consider "the results of the voir dire." Opp. 20. What matters is that *Daniels* reversed the conviction once the court found a presumption of prejudice, even though voir dire did *not* expose individual juror bias. *Id.* at 1211-12. The decision below reaches exactly the opposite result, finding the presumption rebutted solely because voir dire (supposedly) did not expose explicit juror bias.

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[2] *Remmer v. U.S.*, 347 U.S. 227 (1954), does not allow rebuttal of a presumption of juror prejudice arising from community bias. Opp. 17-18 & n.3. The presumption at issue in *Remmer* arose from an attempt to bribe a jury. *Id.* at 229. That presumption is less powerful, because there is no reason a given bribe attempt would render jurors' statements inherently less trustworthy.

d. The Government also fails to distinguish the many conflicting state court precedents, including precedents applying the presumption to reverse convictions without considering rebuttal by voir dire. Pet. 32-33. Among the latter precedents, the Government falsely describes *Johnson v. State*, 476 So. 2d 1195 (Miss. 1985), as holding that an irrebuttable presumption can arise only in a "combination" of circumstances, Opp. 21, when the decision unambiguously holds that adverse publicity alone, when sufficiently inflammatory, can make the presumption conclusive. 476 So. 2d at 1215; *accord Gray v. State*, 728 So. 2d 36, 66 (Miss. 1998). And it is obviously irrelevant that a presumption of prejudice arose in *Commonwealth v. Frazier*, 369 A.2d 1224 (Pa. 1977), on the basis of facts different from those involved here (Opp. 22); the salient point is that *Frazier* reversed the conviction solely by presuming prejudice from adverse publicity, without considering whether voir dire rebutted the presumption. *Id.* at 1230; *see also Ruiz v. State*, 582 S.W.2d 915, 921-24 (Ark. 1979) (considering voir dire in finding presumption of prejudice, but rejecting juror statements of impartiality as rebuttal).[3]

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[3] The government does not even address *People v. Leonard*, 157 P.3d 973 (Cal. 2007), *DeRosa v. State*, 89 P.3d 1124 (Okla. Crim. App. 2004), and *State v. Laaman*, 331 A.2d 354 (N.H. 1974), presumably because those decisions ultimately concluded that no presumption arose. And it argues that *State v. Clark*, 442 So. 2d 1129 (La. 1983), addressed only when a pre-

e. Finally, the Government argues that, assuming the presumption is rebuttable, it was rebutted here. But the Government's arguments only confirm the importance of taking the presumption seriously.

The Government first contends that the jury's impartiality was proved merely because it acquitted Skilling on some counts. Opp. 22. The Government makes no effort to explain how partial acquittal establishes the absence of prejudice *beyond a reasonable doubt* (Pet. 34-35), as opposed to the more obvious inference: after overcharging Skilling, the Government could not prove its case on numerous charges even to a Houston jury.

Nor are the district court's findings of impartiality subject to deference (Opp. 23): because the court failed to apply a presumption and thus improperly required Skilling to *disprove* prejudice, its findings are legally meaningless. Pet. 34.

Lastly, the Government insists that the presumption was rebutted despite Juror 11's openly hostile statements. Opp. 24-25. The Government does not defend the juror's outrageously prejudicial statements, but simply cites the juror's more neutral comments, as if they canceled out his explicit hostility. While "ambiguous and at times contradictory" statements may not be "unusual and do not establish juror bias" (Opp. 25) *in the normal case*, a presumption arises precisely because the case is *not* normal, in that juror promises of impartiality cannot be accepted at face value. If Juror 11's statements suffice

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sumption of prejudice requires a change of venue. Opp. 21. As discussed above, neither point undermines those courts' basic, precedential holdings that the presumption of prejudice is irrebuttable.

to rebut the presumption of prejudice—rather than to confirm it—the presumption has no meaning at all.

## CONCLUSION

The petition should be granted.

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August 26, 2009

# AMICUS
# CURIAE
# BRIEF

②

No. 08-1394

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

# In The
# Supreme Court of the United States

◆

JEFFREY K. SKILLING,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

◆

**On Petition For A Writ Of Certiorari**
**To The United States Court Of Appeals**
**For The Fifth Circuit**

◆

## AMICUS CURIAE BRIEF OF NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

◆

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## QUESTIONS PRESENTED

1. Whether the federal "honest services" fraud statute, 18 U.S.C. § 1346, requires the government to prove that the defendant's conduct was intended to achieve "private gain" rather than to advance the employer's interests, and, if not, whether § 1346 is unconstitutionally vague.

2. When a presumption of jury prejudice arises because of the widespread community impact of the defendant's alleged conduct and massive, inflammatory pretrial publicity, whether the government may rebut the presumption of prejudice, and, if so, whether the government must prove beyond a reasonable doubt that no juror was actually prejudiced.

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## INTEREST OF AMICUS CURIAE[1]

The National Association of Criminal Defense Lawyers (NACDL) is a non-profit organization of more than 11,500 attorneys, in addition to more than 28,000 affiliate members from all fifty states, including private criminal defense attorneys, public defenders, and law professors. The American Bar Association recognizes NACDL as an affiliate organization and awards it full representation in the ABA's House of Delegates.

NACDL was founded in 1958 to promote criminal law research, to advance and disseminate knowledge in the area of criminal practice, and to encourage integrity, independence, and expertise among criminal defense counsel. NACDL is particularly dedicated to advancing the proper, efficient, and just administration of justice, including issues involving the role and duties of lawyers representing parties in administrative, regulatory, and criminal investigations. In furtherance of this and its other objectives, NACDL files a number of amicus curiae briefs each year, addressing a wide variety of criminal justice issues.

NACDL believes that the questions presented here have great significance to the criminal justice system. The first question, concerning the scope of the honest services fraud statute, offers the Court an opportunity to address constitutional and statutory issues that have produced chaos in the courts of appeals. NACDL recently submitted an amicus brief supporting review of a related honest services question in *Sorich v. United States*, 129 S. Ct. 1308 (2009). We again urge the Court to resolve the multifaceted circuit split that plagues 18 U.S.C. § 1346.

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[1] Under Sup. Ct. R. 37.6, counsel for amicus curiae state that no counsel for a party authored this brief in whole or in part, and that no person other than amicus, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. Counsel for all parties received notice of NACDL's intention to file this amicus brief ten days before the due date. Letters of consent to the filing of this brief have been lodged with the Clerk of the Court under Rule 37.2(a).

The second question, on which NACDL submitted an amicus brief in the court of appeals, goes to the heart of the Sixth Amendment right to an impartial jury. Because the court of appeals' decision on that question represents a dangerous departure from this Court's decisions protecting that right, NACDL urges review. NACDL's Amicus Curiae Committee requested and authorized undersigned counsel to file this brief.

## ARGUMENT

### I. THE COURT SHOULD TAKE THIS CASE AS A COMPANION CASE TO *BLACK* TO ADDRESS THE DISARRAY IN HONEST SERVICES CASES.

For years federal courts have decried the "amorphous and open-ended nature" of the honest services statute. *United States v. Brown*, 459 F.3d 509, 523 (5th Cir. 2006), *cert. denied*, 550 U.S. 933 (2007). The courts have struggled to read limiting principles into the opaque text of 18 U.S.C. § 1346. Just a few months ago, Justice Scalia observed that "[w]ithout some coherent limiting principle to define what 'the intangible right of honest services' is, whence it derives, and how it is violated, this expansive phrase invites abuse by headline-grabbing prosecutors in pursuit of local officials, state legislators, and corporate CEOs who engage in any manner of unappealing or ethically questionable conduct." *Sorich v. United States*, 129 S. Ct. 1308, 1310 (2009) (Scalia, J., dissenting from denial of certiorari). And recently the Court granted the writ in *Black v. United States*, No. 08-876, which involves the interpretation of § 1346 where, as here, a private individual is prosecuted for breaching a duty of honest services owed to his employer.

Justice Scalia's dissent in *Sorich* and the grant in *Black* signal that the time has come to resolve the confusion that engulfs the honest services statute. Three principal points require resolution. Most fundamentally, the Court must determine whether courts have the power to engraft limiting principles—none of which has any strong textual basis—on the vague language of § 1346. If federal judges lack that power, then the Court must decide whether the honest services statute, shorn of judge-created limiting principles, is void for vagueness. And if the Court concludes that judges *may* read an extra-textual limitation into § 1346, then it must determine the content of that limiting principle.

To ensure a coherent approach to § 1346, the Court should address these issues together. This case, together with *Black*, presents the ideal vehicle for resolving comprehensively the confusion that has plagued honest services prosecutions of private individuals for the past two decades.

1. The search for an interpretive principle to cabin the "amorphous and open-ended" language of § 1346 raises a threshold question: whether a federal court may properly read into the statute *any* of the limiting principles the courts of appeals have adopted.

This Court has held that "[l]egislatures and not courts should define criminal activity." *United States v. Bass*, 404 U.S. 336, 348 (1971). The search for limits on the broad text of § 1346, however, amounts to little more than forbidden judicial legislation. As Judge Jacobs has observed, "[T]he splintering among the circuits demonstrates [that] section 1346 effectively imposes upon courts a role they cannot perform. When courts undertake to engage in legislative drafting, the process takes decades and the work is performed by unelected officials without the requisite skills or expertise; and as the statutory meaning is invented and accreted, prosecutors are unconstrained and people go to jail for inchoate offenses." *United States v. Rybicki*, 354 F.3d 124, 164 (2d at Cir. 2003) (en banc) (Jacobs, J., dissenting); *see, e.g., United States v. Brumley*, 116 F.3d 728, 736 (5th Cir. 1997) (en banc) (Jolly, J., dissenting) (accusing the majority of "assum[ing] a role somewhere between a philosopher king and a legislator to create its own definitions of the terms of a criminal statute").

The effort by courts to infuse meaning into § 1346 collides as well with the principle that "there is no federal common law of crimes." *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 181 (1994); *see, e.g., United States v. Lanier*, 520 U.S. 259, 267 n.6 (1997); *United States v. Hudson*, 11 U.S. (7 Cranch) 32, 33 (1812). As this Court has made clear, "[F]ederal crimes are defined by statute rather than by common law." *United States v. Oakland Cannabis Buyer's Cooperative*, 532 U.S. 483, 490 (2001). Leaving courts to devise limiting principles for § 1346 unguided by the statutory text (or even by any meaningful legislative history) cannot be distinguished from common law crime definition. *See, e.g., Sorich*, 129 S. Ct. at 1310 ("There is a serious argument that § 1346 is nothing more than an invitation for federal courts to develop a common-law crime of unethical conduct.") (Scalia, J., dissenting from denial of certiorari).

2. If the Court concludes that interpreting § 1346 to include a clear limiting principle amounts to impermissible judicial legislation or common law crime definition, it should decide whether the statute, without judicially created limits, must be held unconstitutionally vague under the Due Process Clause. "A conviction fails to comport with due process if the statute under which it is obtained fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *United States v. Williams*, 128 S. Ct. 1830, 1845 (2008).

Section 1346 without a clear limiting principle violates due process under the *Williams* standard.

Courts have recognized that the statute "depends for its constitutionality on the clarity divined from a jumble of disparate cases." *Brown*, 459 F.3d at 523; *see, e.g., Rybicki*, 354 F.3d at 135-38 (looking to case law to determine the meaning of § 1346 because neither its language nor the "sparse" legislative history provides adequate guidance). But the "disparate cases" that purportedly give the statute "clarity" reflect the limiting principles that courts have read into the opaque language of § 1346. It is doubtful that even *with* those limiting principles the statute can survive a vagueness challenge. But if those limits may not be engrafted on the statutory language, then § 1346 surely "fail[s] to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits" and "authorize[s] and even encourage[s] arbitrary and discriminatory enforcement." *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999) (plurality opinion); *see, e.g., Williams*, 128 S. Ct. at 1845; *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). As Justice Scalia observed, "It is simply not fair to prosecute someone for a crime that has not been defined until the judicial decision that sends him to jail." *Sorich*, 129 S. Ct. at 1310 (Scalia, J., dissenting from denial of certiorari).

3. If the Court concludes that federal judges may read limitations into § 1346, then it must select the appropriate limiting principle for honest services prosecutions of private individuals. This case and *Black* together provide an ideal framework for that issue. *Black* asks whether a private individual must contemplate economic or other property harm to the private party—typically an

employer—to whom honest services are owed. In *Black*, involving agreements that did no harm to the company but conferred an undisclosed tax benefit on the officer, there was private gain but no contemplated harm to the employer. In this case, Skilling, like Black, did not contemplate harm to Enron; he indisputably intended to advance the company's interests. The difference between the two cases is that Skilling *also* did not intend private gain as cases such as *United States v. Thompson*, 484 F.3d 877 (7th Cir. 2007), interpret that phrase. Thus, while *Black* permits the Court to determine whether contemplated harm to the employer is necessary to sustain a conviction under § 1346, Skilling's case permits the Court to determine whether private gain to the defendant is necessary (or sufficient) under the honest services statute, regardless of whether there is contemplated harm to the employer. *See McNally v. United States*, 483 U.S. 350, 355 (1987) (describing honest services fraud as "misuse[] of . . . office for private gain"). The "private gain" principle that Skilling espouses has the potential virtue of being applicable in both private individual and public official honest services cases, thus bridging the existing interpretive gap between the two categories of cases.

4. In our view, it is crucial that the Court resolve these issues together. Addressing some aspects of the problem but leaving others unresolved will merely invite further disarray. Federal prosecutors use the honest services statute thousands of times each year to criminalize a breathtaking range of private and official conduct. Not since 1987, when this Court solved a similar

problem in *McNally*, has such confusion reigned in the lower federal courts over the interpretation of a federal criminal statute. By granting certiorari in this case and considering it in tandem with *Black* (and possibly a public official honest services case), the Court can either place the matter back in Congress' hands, for enactment of better-defined legislation that meets constitutional standards, or construct a limiting principle that will at least ensure uniform interpretation of the statute nationwide.[2]

## II. THE COURT SHOULD GRANT THE WRIT TO PROTECT THE SIXTH AMENDMENT RIGHT TO AN UNBIASED JURY.

This case presents a second issue of extraordinary importance to the criminal justice system: whether voir dire can rebut the presumption of prejudice that arises from intense community hostility toward the defendant coupled with pervasive adverse publicity. The clear split in the circuits on this question makes it certworthy without more. But the remarkable facts of this case make it particularly deserving of the Court's attention. If the presumption of prejudice can be rebutted under these circumstances, as the court of appeals held, then it is a dead letter. Future courts faced with widespread community hostility toward a defendant will compare their circumstances to these, find them less egregious, and conclude without further analysis that a perfunctory voir dire is sufficient to ensure a jury that meets constitutional standards. This case thus represents more than an injustice perpetrated upon a single defendant; it presents a direct threat to the sanctity of the jury trial right enshrined in the Sixth Amendment.

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[2] It is not uncommon for this Court to grant the writ in companion cases that address closely related aspects of a single question. For example, the Court recently decided companion cases that explore the ramifications of *United States v. Booker*, 543 U.S. 220 (2005). *See Kimbrough v. United States*, 552 U.S. 85 (2007); *Gall v. United States*, 552 U.S. 38 (2007). Similarly, the Court decided companion cases to address its evolving Confrontation Clause jurisprudence in the wake of *Crawford v. Washington*, 541 U.S. 36 (2004). *See Davis v. Washington*, 547 U.S. 813 (2006); *Hammon v. Indiana*, 547 U.S. 813 (2006). Here as well it would be appropriate to grant the writ in companion honest services cases to resolve the full range of issues that the statute presents.

The court of appeals' decision acknowledges the extraordinary hostility that Houston and its citizens displayed toward Skilling and his codefendant, Kenneth Lay. App. 56a-59a. The petition provides further detail. Pet. 5-10. Apart from Oklahoma City following the attack on the Murrah Federal Building, there has likely never been a community that so strongly and uniformly viewed itself as the victim of the offenses to be tried. And, apart from Oklahoma City, there has likely never been a community that so strongly and uniformly *hated* the defendants. Here, as in the Oklahoma City bombing case, the effects of Enron's bankruptcy on the Houston community "are so profound and pervasive that no detailed discussion of the evidence is necessary." *United States v. McVeigh*, 918 F. Supp. 1467, 1470 (W.D. Okla. 1996).

This Court has made clear that in such extraordinary cases, even the most meticulous jury selection process cannot ensure an unbiased panel. The jurors' assertions that they can put aside their feelings and beliefs and perform their duty fairly—no matter how sincere—simply "should not be believed." *Mu'Min v. Virginia*, 500 U.S. 415, 430 (1991); *see, e.g., Sheppard v. Maxwell*, 384 U.S. 333, 362-63 (1966); *Rideau v. Louisiana*, 373 U.S. 723, 727 (1963). As this Court observed, "No doubt each juror was sincere when he said he would be fair and impartial . . . but the psychological impact of requiring such a declaration before one's peers is often its father." *Irvin v. Dowd*, 366 U.S. 717, 728 (1961).

Here, as in the Oklahoma City case, the Constitution required the district court to transfer venue and then conduct a rigorous voir dire of prospective jurors from the new venue. Given the sheer loathing for Skilling and Lay that the collapse of Enron engendered in Houston, only with both of those protections—change of venue and thorough voir dire—could there be any confidence that the defendants would face the unbiased jury to which the Constitution entitled them.

Remarkably, the district court provided *neither* protection. Faced with overwhelming evidence that Houston was suffused with hostility toward Skilling and Lay, the court cursorily rejected Skilling's motions to transfer venue. The court then declared that voir dire would last no more than a day. It insisted on conducting voir dire itself, with only the most perfunctory follow-up questioning by counsel. It ignored unmistakable indications of bias in the potential jurors' questionnaires. It persistently asked leading questions of potential jurors—questions ("can you nevertheless be fair and impartial?") designed to mask, rather than expose, bias. It signaled clearly to hesitant jurors the answers that it sought—affirming the jurors' ability to be fair and impartial—during voir dire. Even when grounds to strike potential jurors for cause became apparent, the court often denied challenges. *See* Pet. 10-11 (describing voir dire and jury selection); Brief of Defendant-Appellant Jeffrey K. Skilling at 157-71 (same). And the court granted Skilling and Lay a meager two additional peremptory challenges (for a total of twelve combined challenges), and then denied repeated requests for additional peremptories as jury selection unfolded. All told, the district court imposed a voir dire process that took only five hours and screened forty-six jurors—only eight more than minimum required.

The district court's conduct of jury selection—from the denial of the motions to transfer venue without a hearing to the brief and superficial voir dire to the rulings on challenges for cause to the denial of additional peremptory challenges—represents a shocking triumph of efficiency over fairness. The court of appeals' characterization of what happened here as "exemplary *voir dire*" (App. 62a), simply ignores the concrete reality of what occurred. The Fifth Circuit's conclusion that the district court's perfunctory examination of potential jurors suffices to rebut the presumption of prejudice, if allowed to stand, spells the end of this Court's recognition, in cases such as *Rideau* and *Sheppard*, that community hostility and pervasive adverse publicity render voir dire ineffective in rooting out bias.

If the bedrock constitutional right to "indifferent" jurors[3] means anything, it means that Skilling should not have been tried in Houston before jurors selected in less than a day with only cursory examination, a number of whom had unequivocally expressed harshly negative opinions of the defendants on their questionnaires. We thus urge the Court to grant the writ on this question, resolve the circuit split, and reaffirm that once a presumption of prejudice arises from extreme community hostility or pervasive hostile publicity, it cannot be rebutted through voir dire.

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[3] *Sheppard*, 384 U.S. at 362.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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# JOINT
# APPENDIX

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IN THE

# Supreme Court of the United States

JEFFREY K. SKILLING,
*Petitioner*,

v.

UNITED STATES OF AMERICA,
*Respondent*.

**On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

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# APPENDIX A

# CHRONOLOGICAL LIST OF DOCKET ENTRIES

## United States District Court for the Southern District of Texas (Houston)

## No. 4:04-cr-00025-2

| Filed | # | Docket Text |
|---|---|---|
| 02/18/04 | 16 | SUPERSEDING INDICTMENT as to Jeffrey K Skilling (2) count(s) 1, 2, 3- 10, 11-17, 18-23, 24-25, 26-30, 31-40 , and Richard A Causey (1) count(s) 1s, 2s, 3s-10s, 11s-17s, 18s-23s, 24s-25s, 26s-30s, 41s-42s , filed. (dhansen) Modified on 03/01/2004 (Entered: 02/19/2004) |
| 02/18/04 | 17 | AO 257 Information Sheet as to Jeffrey K Skilling , filed. (dhansen) (Entered: 02/19/2004) |
| 02/18/04 | 18 | MOTION by USA as to Richard A Causey, Jeffrey K Skilling to seal Superseding Indictment and Arrest Warrant until execution of Arrest Warrant , filed. (dhansen) (Entered: 02/19/2004) |
| 02/18/04 | 19 | ORDER granting [18-1] motion to seal Superseding Indictment and Arrest Warrant until execution of Arrest Warrant as to Richard A Causey (1), Jeffrey K Skilling (2) ( |

| **Filed** | **#** | **Docket Text** |
|---|---|---|
| | | Signed by Magistrate Judge Calvin Botley ), entered. Parties ntfd. (dhansen) (Entered: 02/19/2004) |
| 02/18/04 | | Arrest WARRANT issued as to Jeffrey K Skilling (dhansen) (Entered: 02/19/2004) |
| 02/18/04 | 21 | EX PARTE APPLICATION by USA as to Richard A Causey, Jeffrey K Skilling for post-indictment restraining order , filed. (kworley) (Entered: 02/19/2004) |
| 02/18/04 | 22 | AFFIDAVIT of Special Agent Jill Odom by USA as to Richard A Causey, Jeffrey K Skilling , filed. (kworley) (Entered: 02/19/2004) |
| 02/18/04 | 23 | POST-INDICTMENT RESTRAINING ORDER granting [21-1] motion for post-indictment restraining order as to Richard A Causey (1), Jeffrey K Skilling (2),this restraining order shall remain in full force & effect until further order of this court. ( Signed by Judge Sim Lake ), entered. Parties ntfd. (kworley) (Entered: 02/19/2004) |
| 02/19/04 | 24 | Initial appearance/Bond Hearing/Counsel Determination Hearing as to Jeffrey K Skilling held before Magistrate Judge |

| **Filed** | **#** | **Docket Text** |
|---|---|---|
| | | Frances H. Stacy Ct Reporter: ERO Appearances: Buell & Ruemmler f/USA, Woods,Petrocelli, Oppenheimer, Hiler & Kildduff f/Deft (Defendant informed of rights.) , filed. Deft surrender voluntarily., deft's first appearance with counsel. Deft retained counsel. Case is unsealed upon arrest. Bond set for $5,000,000 executed. Deft advised conditions of release. Arraignment set now. (kworley) (Entered: 02/19/2004) |
| 02/19/04 | 25 | Arraignment held before Magistrate Judge Frances H. Stacy Ct Reporter: ERO Appearances: Buell & Ruemmler f/USA, Woods,Petrocelli, Oppenheimer, Hiler & Kilduff f/Deft Jeffrey K Skilling (2) count(s) 1, 2, 3- 10, 11-17, 18-23, 24-25, 26-30, 31-40 , filed., Plea of Not Guilty: , Jeffrey K Skilling (2) count(s) 1, 2, 3-10, 11-17, 18-23, 24-25, 26-30, 31-40 Waiver of Speedy Trial executed. Scheduling order issued w/ cc to parties. Deft bond continued. (kworley) (Entered: 02/19/2004) |
| 02/19/04 | 26 | WAIVER of Speedy Trial Limits by Jeffrey K Skilling , filed. (kworley) (Entered: 02/19/2004) |

| Filed | # | Docket Text |
|---|---|---|
| 02/19/04 | 27 | SCHEDULING ORDER setting Motion Filing deadline on 2/27/04 for Jeffrey K Skilling , includes all motions except motions to suppress evidence & motions to dismiss will contain an averment that the movant has conferred with the respondent & that counsel cannot agree about the disposition of the motion; Motion Response deadline 3/5/04 for Jeffrey K Skilling Jury Trial for 3:00 3/11/04 for Jeffrey K Skilling ; before Judge Sim Lake ( Signed by Judge Sim Lake ), entered. Parties ntfd. Waiver of Speedy Trial? yes (kworley) (Entered: 02/19/2004) |
| 02/19/04 | 28 | MOTION by USA as to Richard A Causey, Jeffrey K Skilling to Correct Typographical error in post-indictment restraining order , filed. (kworley) (Entered: 02/19/2004) |
| 02/19/04 | 29 | (Amended) Post-Indictment Restraining ORDER; [28-1] motion to Correct Typographical error in post-indictment restraining order is Granted as to Richard A Causey (1), Jeffrey K Skilling (2); This restraining order shall remain in full force & effect until further order of this court. ( Signed by |

| Filed | # | Docket Text |
|---|---|---|
| | | Judge Sim Lake ), entered. Parties ntfd. (kworley) (Entered: 02/19/2004) |
| 02/19/04 | 30 | NOTICE of Lis Pendens for real property in The Woodlands by USA as to Richard A Causey, Jeffrey K Skilling , filed. (kworley) (Entered: 02/20/2004) |
| 02/19/04 | 31 | NOTICE of Lis Pendens for real property on McKinney Avenue by USA as to Richard A Causey, Jeffrey K Skilling , filed. (kworley) (Entered: 02/20/2004) |
| 02/19/04 | 32 | NOTICE of Lis Pendens for real property on Briarwood by USA as to Richard A Causey, Jeffrey K Skilling , filed. (kworley) (Entered: 02/20/2004) |
| 02/19/04 | 33 | Receipt for Surrender of Passport as to Jeffrey K Skilling Passport # 131799254 Country: USA , filed. (svaught) (Entered: 02/23/2004) |
| 02/19/04 | 34 | Appearance Secured BOND with Order Setting Conditions of Release entered by Jeffrey K Skilling in Amount $ 5,000,000 cash (fuilly secured Cashier's check) Receipt # 541383, filed. ( Signed by Magistrate Judge Frances H. Stacy ) Bond Depositor: Jeffrey K. Skilling, 10 Briarwood |

| Filed | # | Docket Text |
|---|---|---|
| | | Ct, Houston, TX 77019. (kworley) (Entered: 02/24/2004) |
| 02/20/04 | 35 | Arrest WARRANT issued 2/18/04 Returned Executed as to Jeffrey K Skilling on 2/19/04 , filed. (kworley) (Entered: 02/24/2004) |
| 03/09/04 | 36 | STATUS REPORT by Jeffrey K Skilling , filed. (svaught) (Entered: 03/10/2004) |
| 3/09/04 | 37 | MOTION with Memorandum in Support by Jeffrey K Skilling to dissolve post-indictment restraining order filed. (svaught) (Entered: 03/10/2004) |
| 03/10/04 | 38 | CORRECTED STATUS REPORT by Jeffrey K Skilling , filed. (kworley) (Entered: 03/11/2004) |
| 03/10/04 | 42 | MOTION AND ORDER PURSUANT TO LOCAL RULE 1 as to Jeffrey K Skilling ( signed by Judge Sim Lake ) Added Attorney M Randall Oppenheimer , entered. Parties ntfd. (kworley) (Entered: 03/12/2004) |
| 03/10/04 | 43 | MOTION AND ORDER PURSUANT TO LOCAL RULE 1 as to Jeffrey K Skilling ( signed by Judge Sim Lake ) Added Attorney Daniel M. Petrocelli , entered. Parties ntfd. (kworley) (Entered: 03/12/2004) |

| Filed | # | Docket Text |
|---|---|---|
| 03/10/04 | 44 | MOTION AND ORDER PURSUANT TO LOCAL RULE 1 as to Jeffrey K Skilling ( signed by Judge Sim Lake ) Added Attorney Robert M. Stern , entered. Parties ntfd. (kworley) (Entered: 03/12/2004) |
| 03/10/04 | 46 | MOTION AND ORDER PURSUANT TO LOCAL RULE 1 as to Jeffrey K Skilling ( signed by Judge Sim Lake ) Added Attorney Mark Holscher , entered. Parties ntfd. (kworley) (Entered: 03/12/2004) |
| 03/11/04 | 39 | RESPONSE by USA as to Jeffrey K Skilling to [38-1] Status Conference report, [36-1] report , filed. (kworley) (Entered: 03/11/2004) |
| 03/11/04 | 40 | MOTION by USA as to Richard A Causey, Jeffrey K Skilling for Extension of temporary restraining order and for preliminary injunction , filed. (kworley) (Entered: 03/11/2004) |
| 03/11/04 | 41 | MEMORANDUM by USA as to Richard A Causey, Jeffrey K Skilling in support of [40-1] motion for Extension of temporary restraining order, [40-2] motion for preliminary injunction , filed. (kworley) (Entered: 03/11/2004) |

| Filed | # | Docket Text |
|---|---|---|
| 03/11/04 | 45 | RETURN of Service of Post-Indictment Restraining Order executed to Daniel M. Petrocelli, O'Melveny & Myers LLP on 3/5/04 as to Jeffrey K Skilling filed. (svaught) (Entered: 03/12/2004) |
| 03/11/04 | 49 | Status conference as to Richard A Causey, Jeffrey K Skilling held before Judge Sim Lake Ct Reporter: Manley Appearances: Berkowitz f/USA, Hulkower/Weingarten/ Woods/Petrocelli f/Defts , filed. The Govt's motion to extend temporary restraining order is GRANTED; the existing restraining order is EXTENDED until 5:00 pm on Friday, March 19, 2004. Briefing on outstanding motions shall be as stated on the record. The parties shall be prepared to participate in a conference on Friday, March 19, 2004 at 4:00 pm. Counsel shall confer & submit to the court on a biweekly basis a status report identifying any disputes regarding discovery or other matters. (kworley) (Entered: 03/15/2004) |
| 03/12/04 | 47 | SUPPLEMENTAL MEMORANDUM by Jeffrey K Skilling in support of [37-1] motion |

| Filed | # | Docket Text |
|---|---|---|
| | | to dissolve post-indictment restraining order , filed. (kworley) (Entered: 03/15/2004) |
| 03/15/04 | 50 | SUPPLEMENTAL MEMORANDUM by USA as to Richard A Causey, Jeffrey K Skilling in support of [40-1] restraining order , filed. (kworley) (Entered: 03/16/2004) |
| 03/16/04 | 51 | TRANSCRIPT filed in case as to Richard A Causey, Jeffrey K Skilling for Status Conference Hearing for dates of March 11, 2004 before Judge Sim Lake , filed. ( Court Rptr: Manley) (kworley) (Entered: 03/17/2004) |
| 03/17/04 | | Received and processed request for Southern District of Texas Jury Plan by Office of Ronald G. Woods, counsel for Jeffrey K Skilling (dhansen) (Entered: 03/17/2004) |
| 03/17/04 | 53 | MOTION AND ORDER PURSUANT TO LOCAL RULE 1 as to Jeffrey K Skilling ( signed by Judge Sim Lake ) Added Attorney Bruce A. Hiler , entered. Parties ntfd. (kworley) (Entered: 03/19/2004) |
| 03/17/04 | 54 | RETURN of USM 285 form, Process receipt executed to Beth Klugman, Charles Schwab on 2/23/04 as to |

| Filed | # | Docket Text |
|---|---|---|
| | | Jeffrey K Skilling , filed. (kworley) (Entered: 03/19/2004) |
| 03/17/04 | 58 | RETURN of USM 285 form, Process receipt executed to Edward Duch, MML Investors Services, Inc. on 2/23/04 as to Jeffrey K Skilling , filed. (kworley) (Entered: 03/19/2004) |
| 03/17/04 | 59 | RETURN of USM 285 form, Process receipt executed to Jo Ann Caton, SW Bank of Texas on 2/23/04 as to Jeffrey K Skilling , filed. (kworley) (Entered: 03/19/2004) |
| 03/17/04 | 60 | RETURN of USM 285 form, Process receipt executed to Reid Weingarten, Steptoe & Johnson LLP on 3/5/04 as to Jeffrey K Skilling , filed. (kworley) (Entered: 03/19/2004) |
| 03/18/04 | 52 | MEMORANDUM AND ORDER as to Jeffrey K Skilling denying [37-1] motion to dissolve post-indictment restraining order as to Jeffrey K Skilling (2)mooting [40-1] motion for Extension of temporary restraining order as to Richard A Causey (1), Jeffrey K Skilling (2), mooting [40-2] motion for preliminary injunction as to Richard A Causey (1), Jeffrey K Skilling (2), and the existing |

| Filed | # | Docket Text |
|---|---|---|
| | | restraining order is EXTENDED until further order of this Court. The conference set for Friday, 3/19/04 at 4:00 p.m. is cancelled. ( signed by Judge Sim Lake ), entered. Parties ntfd. (svaught) (Entered: 03/18/2004) |
| 03/24/04 | 61 | JOINT MOTION by Richard A Causey, Jeffrey K Skilling to exclude time under the speedy trial act: proposed order theron , filed. (kworley) (Entered: 03/25/2004) |
| 03/25/04 | 62 | EXCLUDABLE DELAY ORDER granting [61-1] joint motion to exclude time under the speedy trial act: proposed order theron as to Richard A Causey (1), Jeffrey K Skilling (2); The court ORDERS that all time from the filing of the Superseding Indictment (February 18, 2004) to August 18, 2004 (6 months from date of indictment)is excludable under the Speedy Trial Act. ( Signed by Judge Sim Lake ), entered. Parties ntfd. (kworley) (Entered: 03/25/2004) |
| 03/25/04 | | Excludable Delay Worksheet XP start 2/18/04 as to Richard A Causey, Jeffrey K Skilling , filed. (kworley) (Entered: 03/25/2004) |
| 03/25/04 | | Complex case. (kworley) (Entered: |

| Filed | # | Docket Text |
|---|---|---|
| | | 03/26/2004) |
| 03/25/04 | 63 | JOINT STATUS REPORT regarding State of Discovery Under Rule 16 by Richard A Causey, Jeffrey K Skilling, USA as to Richard A Causey, Jeffrey K Skilling , filed. (kworley) (Entered: 03/26/2004) |
| 03/26/04 | | Rcvd and processed request for copy of the Jury Plan by USA (dhansen) (Entered: 03/26/2004) |
| 03/26/04 | 65 | TRANSCRIPT filed in case as to Jeffrey K Skilling for Initial Appearance on Superseding Indictment/Arraignment Hearing held 2/19/04 before Magistrate Judge Frances Stacy, filed. (Court Rptr: ERO) (ddarneille) Modified on 03/29/2004 Additional attachment(s) added on 6/1/2006 (tthompson, ). Additional attachment(s) added on 11/30/2006 (mmapps, ). (Entered: 03/29/2004) |
| 03/29/04 | 66 | NOTICE OF APPEAL by Jeffrey K Skilling re [52-1] order FILING FEE $ paid RECEIPT # 542745 , filed. (jdavenport) (Entered: 03/30/2004) |
| 03/30/04 | | Notice of appeal and Copy of docket for Jeffrey K Skilling transmitted to USCA: [66-1] notice appeal . |

| Filed | # | Docket Text |
|---|---|---|
| | | Parties ntfd. (jdavenport) (Entered: 03/30/2004) |
| 04/02/04 | 68 | Transcript Order Form received, advising transcript is already on file with the Clerk's Office; Pre-Trial Status Conference for dates of 3/11/04 as to Jeffrey K Skilling , filed. (kworley) (Entered: 04/05/2004) |
| 04/05/04 | | Certified and transmitted record on appeal consisting of 4 volumes of pleadings and two volumes of transcript (copies)to U.S. Court of Appeals as to Jeffrey K Skilling : [66-1] notice appeal . . Parties ntfd. (jdavenport) Modified on 04/05/2004 (Entered: 04/05/2004) |
| 04/07/04 | 69 | MOTION with Memorandum in Support by Jeffrey K Skilling for Disclosure of Grand Jury Selection Records ; Declaration of Ronald G. Woods & Proposed Order , filed. (kworley) (Entered: 04/08/2004) |
| 04/08/04 | 70 | SECOND JOINT STATUS REPORT by Richard A Causey, Jeffrey K Skilling, USA as to Richard A Causey, Jeffrey K Skilling regarding State of Discovery under Rule 16 , filed. (kworley) (Entered: 04/12/2004) |
| 04/16/04 | 71 | MEMORANDUM of law in |

| Filed | # | Docket Text |
|---|---|---|
| | | response by USA as to Jeffrey K Skilling to [69-1] motion for Disclosure of Grand Jury Selection Records , filed. (ctaylor) (Entered: 04/16/2004) |
| 04/20/04 | 72 | REPLY MEMORANDUM by Jeffrey K Skilling in support of [69-1] motion for Disclosure of Grand Jury Selection Records, filed. (ddarneille) (Entered: 04/21/2004) |
| 04/21/04 | 73 | MOTION by USA as to Jeffrey K Skilling to Modify Conditions of Deft Skilling's Pretrial Release Order , filed. (kworley) (Entered: 04/21/2004) |
| 04/21/04 | 74 | MEMORANDUM by USA as to Jeffrey K Skilling in support of [73-1] motion to Modify Conditions of Deft Skilling's Pretrial Release Order , filed. (kworley) (Entered: 04/21/2004) |
| 04/21/04 | | USCA Case Number for Jeffrey K Skilling Re: [66-1] notice appeal USCA Number: 04-20318 (mharrison) (Entered: 04/22/2004) |
| 04/22/04 | 75 | THIRD JOINT STATUS REPORT by Richard A Causey, Jeffrey K Skilling, USA regarding state of discovery under Rule 16 , filed. (kworley) (Entered: 04/23/2004) |

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| 04/28/04 | 76 | RESPONSE by Jeffrey K Skilling in opposition to [73-1] motion to Modify Conditions of Deft Skilling's Pretrial Release Order , filed. (kworley) (Entered: 04/29/2004) |
| 04/29/04 | 77 | REPLY MEMORANDUM by USA as to Jeffrey K Skilling in support of [73-1] motion to Modify Conditions of Deft Skilling's Pretrial Release Order , filed. (kworley) (Entered: 04/29/2004) |
| 05/03/04 | 78 | MOTION AND ORDER PURSUANT TO LOCAL RULE 1 as to Jeffrey K Skilling ( signed by Judge Sim Lake ) Added Attorney Jeffrey W. Kilduff , entered. Parties ntfd. (kworley) (Entered: 05/04/2004) |
| 05/06/04 | 79 | FOURTH JOINT STATUS REPORT by Richard A Causey, Jeffrey K Skilling, USA as to Richard A Causey, Jeffrey K Skilling , filed. (ctaylor) Modified on 05/07/2004 (Entered: 05/07/2004) |
| 05/07/04 | 80 | ORDER stating that counsel must submit a proposed scheduling order when filing a Joint status report. USA counsel must submit list of other crim actions pending where present or former Enron employees are defts. Report should include: 1. |

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| | | Trial setting, 2. counsel for all parties, & 3. anticipated length of trial. set scheduling conference for 5/27/04 at 3:00 pm in courtroom 9-B, 9th Floor before Judge Sim Lake ( Signed by Judge Sim Lake ), entered. Parties ntfd. (kworley) (Entered: 05/07/2004) |
| 05/07/04 | 81 | Bond hearing as to Jeffrey K Skilling held before Magistrate Judge Frances H. Stacy Ct Reporter: ERO Appearances: Lacewell-AUSA, Petrocelli,Woods, Hoelscher-f/dft, Deft advisted of conditions of release. Bond conditions amended, as stated on the record. Bond continued, filed. (svaught) (Entered: 05/07/2004) |
| 05/07/04 | 82 | SEALED ORDER as to Jeffrey K Skilling ( Signed by Magistrate Judge Frances H. Stacy ), entered. Parties ntfd. ‘ (svaught) Additional attachment (s) added on 6/1/2006 (tthompson, ). (Entered: 05/07/2004) |
| 05/20/04 | 85 | FIFTH JOINT STATUS REPORT by Richard A Causey, Jeffrey K Skilling, USA regarding state of discovery under Rule 16 , filed. (kworley) (Entered: 05/21/2004) |
| 05/25/04 | 86 | MEMORANDUM AND ORDER as |

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| | | to Jeffrey K Skilling granting in part, denying in part [69-1] motion for Disclosure of Grand Jury Selection Records as to Jeffrey K Skilling (2) ( signed by Judge Sim Lake ), entered. Parties ntfd. (kworley) (Entered: 05/25/2004) |
| 06/01/04 | 87 | ORDER the parties are hereby notified that the Scheduling Conference set for June 4, 2004 at 3:30pm is CANCELED ( Signed by Judge Sim Lake ), entered. Parties ntfd. (ctaylor) (Entered: 06/02/2004) |
| 06/03/04 | 88 | SIXTH JOINT STATUS REPORT by Richard A Causey, Jeffrey K Skilling, USA as to Richard A Causey, Jeffrey K Skilling regarding state of discover under Rule 16 , filed. (kworley) (Entered: 06/04/2004) |
| 06/09/04 | 89 | JOINT MOTION by Jeffrey K Skilling, USA to modify the courts post-indictment restraining order , filed. (ctaylor) Additional attachment(s) added on 6/1/2006 (tthompson, ). (Entered: 06/10/2004) |
| 06/10/04 | 90 | JOINT MOTION by Jeffrey K Skilling, USA to submit amended order , filed. (ctaylor) (Entered: |

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| | | 06/10/2004) |
| 06/10/04 | 91 | ORDER granting [90-1] joint motion to submit amended order as to Jeffrey K Skilling (2) ( Signed by Judge Sim Lake ), entered. Parties ntfd. (ctaylor) (Entered: 06/10/2004) |
| 06/17/04 | 94 | JOINT STATUS REPORT by Richard A Causey, Jeffrey K Skilling, USA as to Richard A Causey, Jeffrey K Skilling , filed. (ctaylor) (Entered: 06/21/2004) |
| 06/30/04 | 95 | ENTRY OF DISMISSAL OF USCA (certified copy)for Jeffrey K Skilling on June 21, 2004 [66-1] notice appeal CCA No. 04-20318 , filed. Pursuant to appellant's motion this appeal is dismissed June 21, 2004. (jdavenport) (Entered: 06/30/2004) |
| 06/30/04 | | Appellant Record/original papers/ exhibits as to Jeffrey K Skilling to be returned. (jdavenport) (Entered: 06/30/2004) |
| 07/01/04 | 96 | EIGTH JOINT STATUS REPORT by Richard A Causey, Jeffrey K Skilling, USA, filed. (ddarneille) Modified on 07/06/2004 (Entered: 07/06/2004) |
| 07/06/04 | | Record on Appeal for Jeffrey K Skilling returned from U.S. Court |

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| | | of Appeals: [66-1] notice appeal USCA No. 04-20318 consisting of 4 volumes of pleadings and two volumes of transcript (copies). (jdavenport) (Entered: 07/06/2004) |
| 07/07/04 | 97 | SUPERSEDING INDICTMENT as to Kenneth L Lay (3) count(s) 1, 12-13, 27-30, 38, 39-41 , Richard A Causey (1) count(s) 1ss, 2ss, 3ss-6ss, 7ss, 8ss11ss, 14ss-20ss, 21ss-22ss, 24ss-26ss, 28ss-29ss, 31ss-32ss, 33ss-37ss, 52ss53ss, Jeffrey K Skilling (2) count(s) 1s, 2s, 3s-6s, 14s-20s, 21s-26s, 31s-32s, 33s-36s, 42s-51s , filed. (dhansen) (Entered: 07/09/2004) |
| 07/07/04 | 99 | MOTION by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay to seal second Superseding Indictment and Arrest Warrant , filed. (dhansen) Modified on 07/09/2004 (Entered: 07/09/2004) |
| 07/07/04 | 100 | ORDER granting [99-1] motion to seal second Superseding Indictment and Arrest Warrant as to Richard A Causey (1), Jeffrey K Skilling (2), Kenneth L Lay (3) ( Signed by Magistrate Judge Mary Milloy ), entered. Parties ntfd. (dhansen) (Entered: 07/09/2004) |
| 07/08/04 | 110 | ORDER following telephone |

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| | | conference as to Richard A Causey, Jeffrey Skilling, Kenneth L Lay Ct Reporter: ERO. (signed by Magistrate Judge Mary Milloy), entered. Parties notified. (ddarneille) (Entered: 07/16/2004) |
| 07/09/04 | 104 | ORDERED that counsel will submit a proposed joint scheduling order by 7/26/04 listing all motions parties anticipate filing, when they will be filed, when discovery can be completed, suggested trial date and anticipated length of time required to present each party's case; or each party will submit a proposed order if counsel are unable to agree. Counsel for the US to submit a list of all other criminal actions pending in this district in which present or former Enron employees are defts; include 1) trial setting 2) counsel for all parties and 3) anticipated length of the trial. Counsel to appear at a scheduling conference at 3:00 7/29/04 (Signed by Judge Sim Lake), entered. Parties ntfd. (ddarneille) (Entered: 07/14/2004) |
| 07/12/04 | 106 | UNOPPOSED WAIVER OF PERSONAL APPEARANCE at Arraignment and Entry of Plea of |

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| | | Not Guilty by Jeffrey K Skilling (2) count(s) 1s, 2s, 3s-6s, 14s-20s, 21s-26s, 31s-32s, 33s-36s, 42s-51s, filed. (ddarneille) (Entered: 07/14/2004) |
| 07/12/04 | 107 | ORDER granting [106-1] arraignment waiver as to Jeffrey K Skilling (2) (Signed by Magistrate Judge Mary Milloy), entered. Parties ntfd. (ddarneille) Modified on 07/14/2004 (Entered: 07/14/2004) |
| 07/12/04 | 108 | MOTION by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay to unseal letters and transcript of telephone conference , filed. (ddarneille) (Entered: 07/14/2004) |
| 07/15/04 | 111 | NINTH JOINT STATUS REPORT regarding state of discovery under Rule 16 by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, USA, filed. (ddarneille) (Entered: 07/16/2004) |
| 07/16/04 | 113 | ORDER granting USA's [108-1] motion to unseal letters and transcript of telephone conference as to Richard A Causey (1), Jeffrey K Skilling (2), Kenneth L Lay (3) (Signed by Judge Sim Lake), entered. Parties ntfd. (ddarneille) (Entered: 07/16/2004) |

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| 07/16/04 | 114 | Hearing held on 5/28/04 as to Richard A Causey, Jeffrey K Skilling before Judge Sim Lake. Ct Reporter: B Slavin. Appearances: Berkowitz/Lacewell f/AUSA, R Weingarten f/deft Causey, D Petrocelli f/deft Skilling, filed. The minutes and transcript of this hearng shall be filed under seal. June 4, 2004 conference scheduled in this case shall be canceled for the reasons stated on the record. Briefing due on 6/3/04 is not due then. Parties shall continue to file bi-weekly status conferences. (This document was unsealed by {113-1] order entered this date) (ddarneille) (Entered: 07/16/2004) |
| 07/16/04 | 115 | EX PARTE LETTER dated 5/26/04 by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (ddarneille) (Entered: 07/16/2004) |
| 07/16/04 | 116 | EX PARTE LETTER dated 6/18/04 by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (ddarneille) (Entered: 07/16/2004) |
| 07/16/04 | 117 | EX PARTE LETTER dated 7/7/04 by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (ddarneille) (Entered: |

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| | | 07/16/2004) |
| 07/22/04 | 121 | JOINT MOTION by Richard A Causey, Jeffrey K Skilling to extend time to brief and argue the proposed scheduling order , filed. (ctaylor) (Entered: 07/23/2004) |
| 07/23/04 | 122 | ORDER granting [121-1] joint motion to extend time to brief and argue the proposed scheduling order as to Richard A Causey (1), Jeffrey K Skilling (2); Parties shall submit papers in conformity with the Court's 7/9/04 order re: proposed scheduling, except the papers shall be submitted by 8/9/04 instead of 7/26/04. The 7/29/04 hearing on this matter is continued, counsel shall appear at a scheduling conference at 3:00 8/11/04 before Judge Sim Lake. The time period from 7/29/04 through 8/11/04 is excluded from the requirements of the Speed Trial Act (Signed by Judge Sim Lake), entered. Parties ntfd. (ddarneille) (Entered: 07/23/2004) |
| 07/23/04 | | Excludable Delay Worksheet XT start 7/29/04 as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (ddarneille) (Entered: 07/28/2004) |
| 07/26/04 | 125 | TRANSCRIPT filed in case as to |

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| | | Richard A Causey, Jeffrey K Skilling for Telephone Conference Hearing for dates of 5/28/04 before Judge Sim Lake , filed. ( Court Rptr: Slavin) (kworley) (Entered: 07/27/2004) |
| 07/29/04 | 126 | TENTH JOINT STATUS REPORT by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay , filed. (ctaylor) (Entered: 08/02/2004) |
| 08/09/04 | 128 | Proposed Scheduling Order by Jeffrey K Skilling, filed. (ddarneille) (Entered: 08/11/2004) |
| 08/09/04 | 129 | MEMORANDUM by Jeffrey K Skilling in support of [128-1] proposed scheduling order, filed. (ddarneille) Additional attachment(s) added on 6/5/2007 (hler, ). (Entered: 08/11/2004) |
| 08/09/04 | 134 | MEMORANDUM by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay regarding proposed schedule, filed. (ddarneille) Modified on 08/11/2004 Additional attachment(s) added on 6/5/2007 (hler, ). Modified on 6/5/2007 (hler, ). (Entered: 08/11/2004) |

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| 08/10/04 | 135 | SUPPLEMENT by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay to [134-1] memorandum regarding proposed schedule, filed. (ddarneille) (Entered: 08/11/2004) |
| 08/11/04 | 136 | Pre-trial conference as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay held before Judge Sim Lake. Ct Reporter: J Sanchez. Appearances: Lacewell, Berkowitz, Houston & Reummler f/AUSA; Weingarten & Hulkower f/Causey; Petrocelli, Woods & Holscher f/Skilling; Ramsey, Collins, Secrest & Lewis f/Lay, filed. Defts' motions to sever shall be filed by 8/20/04; the Govt's responses shall be filed by 9/10/04; Defts' replies shall be filed by 9/17/04; Replies shall be limited to 5 pages. Motions to transfer shall be filed 20 days after Court rules on motions to sever; Govt shall reply within 14 days; Defts' replies shall be filed 1 week therafter and shall be limited to 5 pages. Defts' motions for Bill of Particulars shall be filed by 9/10/04; Govt's responses shall be filed by 10/1/04; Defts' replies shall be filed by 10/8/04 and shall be limited to 5 pages |

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| | | each. Proposed orders attached to Bills of Particulars should allow discrete rulings by the Court. Govt shall respond to any Brady motions filed on behalf of Mr Lay with 20 days. (ddarneille) (Entered: 08/16/2004) |
| 08/12/04 | 138 | RETURN of service by USMS of notice of lis pendens on real property executed to County Clerk on 7/14/04 as to Jeffrey K Skilling, filed. (ddarneille) (Entered: 08/18/2004) |
| 08/16/04 | 140 | TRANSCRIPT filed in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay for Pretrial Hearing held 8/11/04 before Judge Sim Lake, filed. (Court Rptr: J Sanchez) (ddarneille) (Entered: 08/18/2004) |
| 08/18/04 | 141 | MOTION with Memorandum in Support by Jeffrey K Skilling for more time to file his change of venue motion , filed. (ddarneille) (Entered: 08/23/2004) |
| 08/20/04 | 146 | MOTION with Memorandum in Support by Jeffrey K Skilling for severance , filed. (ddarneille) (Entered: 08/24/2004) |
| 08/23/04 | 147 | MEMORANDUM by USA as to Jeffrey K Skilling in opposition to |

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| | | [141-1] motion for more time to file his change of venue motion , filed. (kworley) (Entered: 08/24/2004) |
| 08/24/04 | 145 | ORDER denying [141-1] motion for more time to file his change of venue motion as to Richard A Causey (1), Jeffrey K Skilling (2)denying [144-1] join/joinder as to Richard A Causey (1) (Signed by Judge Sim Lake), entered. Parties ntfd. (ddarneille) (Entered: 08/24/2004) |
| 08/24/04 | 148 | REPLY MEMORANDUM by Jeffrey K Skilling to response to [141-1] motion for more time to file his change of venue motion , filed. (kworley) (Entered: 08/30/2004) |
| 08/26/04 | 149 | ELEVENTH JOINT STATUS REPORT regarding state of discovery under Rule 16 by USA, Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (ddarneille) (Entered: 08/31/2004) |
| 09/09/04 | 150 | TWELFTH JOINT STATUS REPORT by USA, Richard A Causey, Jeffrey K Skilling, Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay , filed.(ddarneille, ) (Entered: 09/09/2004) |
| 09/10/04 | 151 | MOTION for Leave to File |

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| | | memorandum of law exceeding the page limit by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Text of Proposed Order)(ddarneille, ) (Entered: 09/13/2004) |
| 09/10/04 | 152 | Memorandum in Response by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 61 Motion for Miscellaneous Relief, 132 Motion for Speedy Trial, 142 Motion to Sever DefendantMotion for Miscellaneous Relief, 146 Motion to Sever Defendant, 131 Motion to Sever DefendantMotion for Miscellaneous Relief , filed.(ddarneille, ) (Entered: 09/13/2004) |
| 09/13/04 | 153 | ORDER granting 151 Motion for Leave to File memorandum of law exceeding the page limit as to Richard A Causey (1), Jeffrey K Skilling (2), Kenneth L Lay (3).(Signed by Judge Sim Lake.) Parties notified. (ddarneille, ) (Entered: 09/13/2004) |
| 09/14/04 | 154 | MOTION with memorandum in support for Bill of Particulars by Jeffrey K Skilling, filed. (Attachments: # 1 continuation of exhibits to memorandum) (ckrus, ) |

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| | | (Entered: 09/14/2004) |
| 09/17/04 | 158 | Reply MEMORANDUM in Support by Richard A Causey as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 142 Motion to Sever DefendantMotion or Relief from improper joinder , filed.(ncavazos, ) (Entered: 09/20/2004) |
| 09/17/04 | 160 | Reply MEMORANDUM in Support by Jeffrey K Skilling re 146 Motion to Sever Defendant , filed.(ckrus, ) (Entered: 09/20/2004) |
| 09/17/04 | 163 | MEMORANDUM by Jeffrey K Skilling re 146 Motion to Sever Defendant , filed.(sfedele, ) (Entered: 09/21/2004) |
| 09/23/04 | 164 | MOTION and memorandum in support for for the identification and production of Brady Materials by Jeffrey K Skilling, filed. (Attachments: # 1 Exhibit # 2 Exhibit A-C# 3 exhibits D-H# 4 Exhibit I 1-30# 5 Exhibit I 31-End# 6 exhibits J - L# 7 exhibits M-N# 8 exhibits O - Q# 9 Proposed Order) (ckrus, ) (Entered: 09/24/2004) |
| 09/23/04 | 165 | THIRTEENTH JOINT STATUS REPORT by USA, Richard A |

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| | | Causey, Jeffrey K Skilling, Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay , filed.(ddarneille, ) (Entered: 09/24/2004) |
| 10/01/04 | 167 | MEMORANDUM OF LAW in Response by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 157 MOTION for Bill of Particulars and MOTION to Strike surplasage, 155 MOTION for Bill of Particulars, 154 MOTION for Bill of Particulars , filed. (Attachments: # 1 Continuation) (ddarneille, ) (Entered: 10/04/2004) |
| 10/01/04 | 168 | MOTION for Leave to Exceed the Page Limit re: Memorandum of Law in Response by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(ddarneille, ) (Entered: 10/04/2004) |
| 10/04/04 | 169 | RETURN of Notice of Filing of Lis Pendens Executed on 7/21/04 to Dallas County Clerk as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (ddarneille, ) (Entered: 10/04/2004) |
| 10/07/04 | 172 | Fourteenth JOINT STATUS REPORT regarding State of |

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| | | Discovery under Rule 16 by Richard A Causey, USA, Jeffrey K Skilling, Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(kworley, ) (Entered: 10/13/2004) |
| 10/08/04 | 173 | REPLY MEMORANDUM in Support by Jeffrey K Skilling re 154 MOTION for Bill of Particulars , filed. (Attachments: # 1 Proposed Order) (ddarneille, ) (Entered: 10/14/2004) |
| 10/13/04 | 175 | Memorandum in Opposition by USA as to Jeffrey K Skilling re 164 MOTION for Brady Materials , filed.(kworley, ) (Entered: 10/19/2004) |
| 10/14/04 | 176 | MOTION for the Identification and Production of Brady Materials, MOTION for Production of Rule 16, MOTION for Jencks Act Material in the possession of cooperating state and federal agencies, the Enron Bank Examiners, and other cooperating Investigators. by Jeffrey K Skilling, filed. (Attachments: # 1 Exhibit # 2 Errata cont'd# 3 Exhibit cont'd# 4 Exhibit B - C# 5 Exhibit E-J# 6 Exhibit J cont'd - N# 7 Exhibit N |

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| | | cont'd - R# 8 Exhibit S# 9 Exhibit T# 10 Exhibit U# 11 Exhibit V# 12 Exhibit W - X# 13 Exhibit X cpnt'd# 14 Exhibit X cont'd - BB# 15 Exhibit BB cont'd - GG# 16 Exhibit HH - KK# 17 Exhibit KK cont'd - SS# 18 Exhibit TT - YY# 19 Proposed Order)(kworley, ) (Entered: 10/19/2004) |
| 10/19/04 | 177 | MEMORANDUM AND ORDER Granting in part and Denying in part 142 Motion for Severance or Relief from Improper Joinder as to Richard A Causey(1); Granting in part and Denying in part 146 Motion for Severance as to Jeffrey K Skilling (2); Granting in part and Denying in part 131 Motion for Severance and Relief from Prejudicial Joinder as to Kenneth L Lay (3). The Government is Ordered to identify by 4:00 p.m. 11/12/04 all of the statements of defendants that it claims to have produced, with a courtesy copy to the court's chambers.(Signed by Judge Sim Lake.) Parties notified. (hcarr, ) (Entered: 10/19/2004) |
| 10/20/04 | 180 | MOTION for Leave to exceed the page limit by Jeffrey K Skilling, filed. (ckrus, ) (Entered: 10/22/2004) |

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| 10/20/04 | 183 | REPLY MEMORANDUM in Support by Jeffrey K Skilling re 176 MOTION for Brady Materials MOTION for Jencks Act Material MOTION for Jencks Act Material MOTION for Jencks Act Material MOTION to Produce Rule 16 MOTION to Produce Rule 16 MOTION to Produce Rule 16 , filed. (Attachments: # 1 Exhibit)(ckrus, ) (Entered: 10/22/2004) |
| 10/21/04 | 178 | ORDER Granting Skilling's Motion to Exceed the Page Limit. ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 10/21/2004) |
| 10/21/04 | 179 | ORDER granting Government's 168 Motion for Leave to Exceed the Page Limit.(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 10/21/2004) |
| 10/21/04 | 184 | Fifteenth Joint STATUS REPORT by Richard A Causey, USA, Jeffrey K Skilling, Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(ncavazos, ) (Entered: 10/25/2004) |
| 10/26/04 | 186 | AGREED MOTION (for Extension of Time to File Response/Reply) regarding the |

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| | | Schedule for Briefing Defendants' Motion to Transfer Venue by Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(ddarneille, ) (Entered: 10/28/2004) |
| 10/27/04 | 185 | ORDER Granting Agreed Motion Regarding the Schedule for Briefing Defendants' Motion to Transfer Venue. Reply briefs in support of motions to transfer venue are due 12/01/2004. ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 10/27/2004) |
| 10/28/04 | 187 | PROPOSED ORDER regarding all defts' Motions for a Bill of Particulars and Kenneth L Lay's Motion to Strike Surplusage (in RESPONSE to Court's letter request dated 10/20/04) by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay , filed.(ddarneille, ) (Entered: 10/29/2004) |
| 10/28/04 | 188 | RESPONSE by Jeffrey K Skilling re 187 Proposed Order regarding all Defendants' Motions for a Bill of Particulars, , filed.(ddarneille, ) (Entered: 11/01/2004) |
| 10/29/04 | 191 | MAIL RETURNED UNDELIVERABLE re: 177 sent |

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| | | to Samuel W Buell forwarded to file as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay , filed. (ddarneille, ) (Entered: 11/03/2004) |
| 11/02/04 | 189 | ORDER that Government shall provide a written statement to all defendants, with a copy to the Court, no later than November 19, 2004, regarding certain categories of information with respect to the Second Superseding Indictment.( Signed by Judge Sim Lake ). Parties notified. (rkonieczny, ) (Entered: 11/02/2004) |
| 11/02/04 | 190 | ORDER Granting Motion to Exceed Page Limit in Support of Their Joint Motin to Transfer Venue as to Richard A Causey, Jeffrey K Skilling ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 11/03/2004) |
| 11/02/04 | 192 | MOTION for Leave to File Joint Motion to Transfer Venue Exceeding the Page Limit by Richard A Causey, Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(ddarneille, ) (Entered: 11/04/2004) |
| 11/03/04 | 194 | Memorandum of Law in Response by USA as to Jeffrey K Skilling re 176 MOTION for Brady Materials |

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| | | MOTION for Jencks Act Material MOTION to Produce Rule 16 MOTION for Brady Materials MOTION for Jencks Act Material MOTION to Produce Rule 16 MOTION for Brady Materials MOTION for Jencks Act Material MOTION to Produce Rule 16 , filed. (Attachments: # 1 Exhibit)(ddarneille, ) (Entered: 11/10/2004) |
| 11/04/04 | 193 | SIXTEENTH JOINT STATUS REPORT by Richard A Causey, USA, Jeffrey K Skilling, Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(ddarneille, ) (Entered: 11/10/2004) |
| 11/08/04 | 196 | JOINT MOTION to Transfer Venue by Richard A Causey, Jeffrey K Skilling, filed. (Unscanned Appendix of Authorities in Support may be Viewed in the Clerk's Office) (Attachments: # 1 Proposed Order) (ddarneille, ) Modified on 11/23/2004 (ddarneille, ). (Entered: 11/10/2004) |
| 11/08/04 | 197 | MEMORANDUM in Support by Jeffrey K Skilling as to Richard A Causey, Jeffrey K Skilling re 196 JOINT MOTION to Change |

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| | | Venue , filed. (Attachments: # 1 continuation)(ddarneille, ) (Entered: 11/10/2004) |
| 11/08/04 | 198 | DECLARATION of Philip K Anthony PhD in Support by Jeffrey K Skilling re 196 MOTION to Change Venue , filed. (Attachments: # 1 Exhibit # 2 Exhibit continuation# 3 Exhibit continuation# 4 Exhibit continuation) (ddarneille, ) (Entered: 11/10/2004) |
| 11/08/04 | 199 | DECLARATION of Edward Bronson PH.D in Support by Jeffrey K Skilling re 196 MOTION to Change Venue , filed. (Attachments: # 1 continuation) (ddarneille, ) (Entered: 11/10/2004) |
| 11/08/04 | 200 | DECLARATION of Stephen L Klineberg PH.D in Support by Jeffrey K Skilling re 196 MOTION to Change Venue , filed.(ddarneille, ) (Entered: 11/10/2004) |
| 11/08/04 | 201 | DECLARATION of Roy Weinstein in Support by Jeffrey K Skilling re 196 MOTION to Change Venue , filed. (Attachments: # 1 Exhibit continuation) (ddarneille, ) (Entered: 11/10/2004) |
| 11/08/04 | 202 | DECLARATION of David J |

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| | | Marroso in Support by Jeffrey K Skilling re 196 MOTION to Change Venue (filed with 290 exhibits too volumous to scan, that may be viewed at the clerk's office) , filed.(ddarneille, ) Additional attachment(s) added on 5/24/2007 (pclark, ). Additional attachment(s) added on 5/24/2007 (pclark, ). Additional attachment(s) added on 5/24/2007 (pclark, ). Additional attachment(s) added on 5/25/2007 (mfritsche, ). Additional attachment(s) added on 5/25/2007 (mfritsche, ). Additional attachment(s) added on 5/29/2007 (mfritsche, ). Additional attachment(s) added on 5/29/2007 (mfritsche, ). (Entered: 11/10/2004) |
| 11/08/04 | 203 | DECLARATION of Russell Scott Armstrong in Support by Jeffrey K Skilling re 196 MOTION to Change Venue (filed with 2 volumes of exhibits to volumous to scan that may be viewed at the clerk's office), filed. (ddarneille, ) Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 |

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| | | (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 |

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| | | (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 |

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| | | (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on 6/7/2007 (pclark, ). Additional attachment(s) added on |

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| | | 6/7/2007 (pclark, ). (Entered: 11/10/2004) |
| 11/08/04 | 204 | SUPPLEMENTAL MEMORANDUM in Support by Richard A Causey as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 196 MOTION to Change Venue , filed. (Attachments: # 1 Exhibit Index)(ddarneille, ) (Entered: 11/10/2004) |
| 11/10/04 | 207 | MEMORANDUM in Support by Jeffrey K Skilling re 176 MOTION for Brady Materials MOTION for Jencks Act Material MOTION for Jencks Act Material MOTION for Jencks Act Material MOTION to Produce Rule 16 MOTION to Produce Rule 16 MOTION to Produce Rule 16 , filed. (Attachments: # 1 Proposed Order)(svaught, ) (Entered: 11/16/2004) |
| 11/15/04 | 208 | MOTION for Extension of Time to File Response/Reply as to 196 MOTION to Change Venue by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (ckrus, ) (Entered: 11/17/2004) |
| 11/17/04 | 215 | NOTICE of Errata to Exhibit 3 by Jeffrey K Skilling re 198 Declaration of Philip K Anthony |

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| | | PhD in Support of Motion to Transfer Venue, filed. (ddarneille, ) (Entered: 11/23/2004) |
| 11/17/04 | 217 | (AMENDED) DECLARATION of Philip K Anthony PhD in Support by Jeffrey K Skilling as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 196 JOINT MOTION to Transfer Venue , filed. (Exhibits 1-7 may be viewed at the Clerk's Office)(ddarneille, ) (Entered: 11/23/2004) |
| 11/18/04 | 211 | SEVENTEENTH JOINT STATUS REPORT REGARDING STATE OF DISCOVERY UNDER RULE 16 by USA, Richard A Causey, Jeffrey K Skilling, and Kenneth L Lay, filed.(jrichards, ) (Entered: 11/19/2004) |
| 11/19/04 | 210 | ORDER granting 208 Motion for Extension of Time to File Response/Reply to Motion for Change of Venue as to Richard A Causey (1), Jeffrey K Skilling (2), Kenneth L Lay (3). Govt's response due 12/3/04; reply due by 12/20/04.(Signed by Judge Sim Lake.) Parties notified.(djustice, ) (Entered: 11/19/2004) |
| 11/19/04 | 212 | Statement in compiance with court's order dated 11/2/04 by |

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| | | USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 attachment tabs 2-7)(ckrus, ) (Entered: 11/22/2004) |
| 11/19/04 | 213 | ORDER Granting Government's Motion to Seal.( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 11/22/2004) |
| 11/19/04 | 218 | MOTION to Seal Co-Conspirator List by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order) (ddarneille, ) Modified on 11/24/2004 (ddarneille, ). (Entered: 11/23/2004) |
| 11/22/04 | 219 | RESPONSE in Opposition by Jeffrey K Skilling re 218 MOTION to Seal Co-Conspirator List, filed.(ddarneille, ) (Entered: 11/24/2004) |
| 11/23/04 | 214 | MOTION for Reconsideration re 213 Order by Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(svaught, ) (Entered: 11/23/2004) |
| 11/23/04 | 216 | MEMORANDUM in Support by Jeffrey K Skilling re 214 MOTION for Reconsideration re 213 Order , filed.(svaught, ) (Entered: |

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| | | 11/23/2004) |
| 11/30/04 | 220 | MEMORANDUM of Law in response to Defendant Jeffrey K. Skilling's Motion to Reconsider order granting Government's Motin to Seal Co-Conspirator List by USA as to Jeffrey K. Skilling(ncavazos, ) (Entered: 12/03/2004) |
| 12/01/04 | 222 | REPLY in Support by Jeffrey K Skilling re 214 MOTION for Reconsideration re 213 Order , filed.(ncavazos, ) (Entered: 12/03/2004) |
| 12/02/04 | 224 | Sealed Minute Entry as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(ddarneille, ) (Entered: 12/06/2004) |
| 12/02/04 | 226 | 18th Joint STATUS REPORT by Richard A Causey, USA, Jeffrey K Skilling, Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(ckrus, ) (Entered: 12/06/2004) |
| 12/03/04 | 223 | ORDER granting Govt's Mtn to Exceed the Page Limit with respect to its Response to Change of Venue Motion, filed.( Signed by Judge Sim Lake ). Parties notified. (djustice, ) (Entered: 12/03/2004) |

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| 12/03/04 | 229 | Agreed MOTION to Exceed the Page Limit with Respect to Its Response to Change of Venue Motion by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(ltien, ) (Entered: 12/10/2004) |
| 12/03/04 | 230 | Declaration of David A Zagorski PhD in Response to Defendants' 196 Motion to Transfer Venue as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Appendix)(ltien, ) (Entered: 12/10/2004) |
| 12/03/04 | 231 | Memorandum of Law in Response to Defendants' 196 Joint Motion to Transfer Venue by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(ltien, ) (Entered: 12/10/2004) |
| 12/07/04 | 227 | ORDER Granting Skilling and Causey's Motion to Exceed the Page Limit in Support of Their Joint Reply in Support of Motion to Transfer Venue. ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 12/08/2004) |
| 12/07/04 | 232 | MOTION for Leave to Exceed the Page Limit in Support of Their Joint Reply in Support of Motion |

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| | | to Transfer Venue by Richard A Causey, Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(ltien, ) (Entered: 12/10/2004) |
| 12/08/04 | 228 | SEALED NOTICE by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (ddarneille, ) Modified on 12/10/2004 (ddarneille, ). (Entered: 12/09/2004) |
| 12/08/04 | 234 | MOTION to Seal by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (ddarneille, ) (Entered: 12/10/2004) |
| 12/08/04 | 235 | ORDER granting 234 Motion to Seal as to Richard A Causey (1), Jeffrey K Skilling (2), Kenneth L Lay (3).(Signed by Judge Sim Lake.) Parties notified.(ddarneille, ) (Entered: 12/10/2004) |
| 12/09/04 | 236 | ORDER granting in part and denying in part 214 Motion for Reconsideration as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake) Parties notified.(ddarneille, ) (Entered: 12/10/2004) |
| 12/10/04 | 233 | SEALED TRANSCRIPT filed in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay; hearing held on 12/2/04 before Judge Sim Lake. Court Reporter: |

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| | | Anita Manley , filed. (cpeebles) (Entered: 12/10/2004) |
| 12/10/04 | 239 | JOINT MOTION to Amend Schedule of Joint Status Reports by USA, Richard A Causey, Jeffrey K Skilling, Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(ddarneille, ) (Entered: 12/16/2004) |
| 12/14/04 | 238 | Sealed Document as to Jeffrey K Skilling, filed.(ddarneille, ) (Entered: 12/15/2004) |
| 12/16/04 | 240 | ORDER granting Govt's Motion for Additional Time to File Response to Motion for Production of Material Favorable to the Accusedas to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay; response to motion due 1/7/05. (Signed by Judge Sim Lake). Parties notified. (djustice, ) (Entered: 12/16/2004) |
| 12/16/04 | 243 | Sealed Statement by USA as to Jeffrey K Skilling, filed.(ddarneille, ) (Entered: 12/17/2004) |
| 12/16/04 | 244 | Sealed Statement by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay in compliance with Court's Order, |

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| | | filed.(ddarneille, ) (Entered: 12/17/2004) |
| 12/16/04 | 245 | Sealed Document by Kenneth L Lay, Richard A Causey, as to Jeffrey K Skilling, filed.(ddarneille, ) (Entered: 12/17/2004) |
| 12/16/04 | 246 | SEALED MOTION by Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (ddarneille, ) (Entered: 12/17/2004) |
| 12/16/04 | 247 | NINETEENTH JOINT STATUS REPORT by Richard A Causey, USA, Jeffrey K Skilling, Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(ctaylor, ) (Entered: 12/20/2004) |
| 12/17/04 | 242 | ORDER granting 239 Motion to Amend Schedule of Joint Status Reports as to Richard A Causey (1), Jeffrey K Skilling (2), Kenneth L Lay (3).(Signed by Judge Sim Lake) Parties notified.(ddarneille, ) (Entered: 12/17/2004) |
| 12/20/04 | 249 | Reply MEMORANDUM of Defendants Richard A Causey, Jeffrey K Skilling in support of Joint Motion to Transfer Venue, filed.(pmartinez, ) (Entered: 12/20/2004) |

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| 12/20/04 | 251 | Supplemental Declaration of Russel Scott Armstrong in Support of Defendant Jeffrey K Skilling's Motion to Transfer Venue, filed.(pmartinez, ) (Entered: 12/21/2004) |
| 12/20/04 | 252 | Supplemental Declaration of Phillip K. Anthony,PH.D in Support of Defendant Jeffrey K Skilling re 196 MOTION to Transfer Venue , filed. (pmartinez, ) (Entered: 12/21/2004) |
| 12/20/04 | 254 | Supplemental Declaration of Edward Bronson, PH.D, in Support of Defendant Jeffrey K Skilling's re 192 MOTION to Transfer Venue , filed. (pmartinez, ) (Entered: 12/21/2004) |
| 12/20/04 | 255 | Supplemental Appendix of Authorities In Support of Defendant Jeffrey K Skilling's Motion to Transfer Venue, filed.(pmartinez, ) (Entered: 12/21/2004) |
| 12/20/04 | 256 | Supplemental Declaration of David J. Marroso in Support of Defendant Jeffrey K Skilling's Motion to Transfer Venue, filed. Exhibits 1 through 85 filed in separate expandex folder located in fileroom 1st floor (pmartinez, ) Modified on 12/22/2004 (ncavazos, |

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| | | ). Additional attachment(s) added on 5/23/2007 (pclark, ). (Entered: 12/21/2004) |
| 12/20/04 | 1222 | Declaration of Philip K Anthony, PH. D in Suppor of Deft Kenneth Lay's Motion to Transfer Venue, filed. (Attachments: # 1 Continuation)(hler, ) (Entered: 06/06/2007) |
| 01/07/05 | 264 | Sealed Document as to Jeffrey K Skilling, filed.(ctaylor, ) (Entered: 01/11/2005) |
| 01/07/05 | 265 | MOTION for a Case Management Order by Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(ddarneille, ) (Entered: 01/11/2005) |
| 01/07/05 | 266 | SUPPLEMENTAL MEMORANDUM in Support by Jeffrey K Skilling as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 154 MOTION for Bill of Particulars , filed. (Attachments: # 1 Exhibit A# 2 Exhibit A Continued# 3 Exhibit B# 4 Proposed Order)(ddarneille, ) (Entered: 01/11/2005) |
| 01/07/05 | 267 | SUPPLEMENTAL MEMORANDUM in Support by Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, |

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| | | Kenneth L Lay re 157 MOTION for Bill of Particulars , filed.(ddarneille, ) (Entered: 01/11/2005) |
| 01/10/05 | 268 | CORRECTED MEMORANDUM in Support by Jeffrey K Skilling as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 265 MOTION for a Case Management Order , filed.(ddarneille, ) (Entered: 01/11/2005) |
| 01/10/05 | 269 | NOTICE of Errata by Jeffrey K Skilling re 265 MOTION for a Case Management Order, filed.(ddarneille, ) (Entered: 01/11/2005) |
| 01/12/05 | 270 | RESPONSE to Skilling's Motion for Case Management Order, by Kenneth L Lay , filed.(psmith, ) (Entered: 01/14/2005) |
| 01/13/05 | 271 | Twentieth JOINT STATUS REPORT Regarding State of Discovery Under Rule 16, by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (psmith, ) (Entered: 01/14/2005) |
| 01/14/05 | 272 | Reply MEMORANDUM in Support by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 248 MOTION to Quash Rule 17(C) Subpoena |

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| | | Served by Kenneth L. Lay , filed.(ncavazos, ) (Entered: 01/18/2005) |
| 01/14/05 | 274 | RESPONSE by Richard A Causey as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 265 MOTION for a Case Management Order , filed.(ctaylor, ) (Entered: 01/18/2005) |
| 01/14/05 | 275 | MOTION to Quash Rule 17(c) Subpoena Served by Kenneth L Lay by Bank of America N.A. as to Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(ctaylor, ) (Entered: 01/18/2005) |
| 01/18/05 | 276 | TRANSCRIPT filed in case as to Jeffrey K Skilling Bond Conditions held on 5/7/2004 before Judge Frances H Stacy. ERO:Recorded , filed. (espencer, ) Additional attachment(s) added on 7/20/2006 (mgoolsby, ). (Entered: 01/18/2005) |
| 01/19/05 | 277 | MEMORANDUN and ORDER 196 Request for a Hearing on their motion to transfer venue is Denied, and the Joint motion to transfer venue as to Richard A Causey (1), Jeffrey K Skilling, which has been adopted by defendant Kenneth L. Lay (3) via his Declaration of |

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| | | Adoption of Jeffrey Skilling's Motion to Tansfer Venue 195 is Denied.(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 01/19/2005) |
| 01/23/05 | 667 | SEALED MOTION by Jeffrey K Skilling, Kenneth L Lay, filed BAR CODE 4:05CI3839 (ncavazos, ) (Entered: 01/24/2006) |
| 01/27/05 | 284 | TWENTY FIRST JOINT STATUS REPORT by Richard A Causey, USA, Jeffrey K Skilling, Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(ctaylor, ) (Entered: 02/01/2005) |
| 01/28/05 | 279 | MOTION for Leave to File Instanter the Government's Memorandum in Opposition to Defendants' Supplemental Motion for Bill of Particulars by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(hcarr, ) (Entered: 01/31/2005) |
| 01/28/05 | 280 | ORDER granting 279 Motion for Leave to File Instanter, Defendants are given 14 dsys to file their reply briefs in support of their motions and Skilling's Motion for a Case Management |

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| | | Order.(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 01/31/2005) |
| 01/28/05 | 281 | MEMORANDUM of Law in Response to all Motions for Bill of Particulars by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay , filed. (ncavazos, ) (Entered: 01/31/2005) |
| 01/28/05 | 282 | MEMORANDUM of Law in response to defendant Jeffrey K. Skillings Motion for a case management order by USA as to Jeffrey K Skilling , filed. (ncavazos, ) (Entered: 01/31/2005) |
| 01/31/05 | 286 | SEALED ORDER as to Jeffrey K Skilling re: 246 , entered and placed in vault. BAR CODE 4:05CI0198( Signed by Judge Sim Lake ). Parties notified. (ncavazos, ) (Entered: 02/02/2005) |
| 02/02/05 | 285 | MEMORANDUM AND ORDER Denying 237 MOTION for Production of Favorable Evidence. Denying 176 Motion for the Identification and Production of Brady Rule 16, and Jencks Act Materials in the Possession of Cooperating State and Federal Agencies, the Enron Bankruptcy Examiners, and Other Cooperating Investigators. |

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| | | Denying 164 MOTION for Brady Materials. Denying 181 Motion for the Production of Material Favorable to the Accused.Twenty-second Status Report due by 2/17/2005. Scheduling Conference set for 2/24/2005 at 02:00 PM in Courtroom 9B before Judge Sim Lake( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 02/02/2005) |
| 02/08/05 | 287 | MAIL RETURNED UNDELIVERABLE sent to Samuel W. Buell as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay , filed. (lgonzales, ) (Entered: 02/09/2005) |
| 02/10/05 | 289 | BRIEF in support of defendant Jeffrey K Skilling re 266 Supplemental Memorandum in Support, of Bill of Particulars , filed.(ncavazos, ) (Entered: 02/11/2005) |
| 02/11/05 | 291 | REPLIES in Support by Richard A Causey as to Joinder in co-Defendants' Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 265 MOTION for a Case Management Order , filed.(ncavazos, ) (Entered: 02/11/2005) |
| 02/14/05 | 292 | REPLY MEMORANDUM in |

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| | | Support by Jeffrey K Skilling re 265 MOTION for a Case Management Order , filed.(ncavazos, ) (Entered: 02/14/2005) |
| 02/17/05 | 297 | TWENTY-SECOND JOINT STATUS REPORT by Richard A Causey, USA, Jeffrey K Skilling, Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(ctaylor, ) (Entered: 02/23/2005) |
| 02/17/05 | 298 | MAIL RETURNED UNDELIVERABLE re: 285 as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay , filed. (ctaylor, ) (Entered: 02/23/2005) |
| 02/18/05 | 294 | ORDER granting 275 Motion to Quash Subpoena as to Richard A Causey (1), Jeffrey K Skilling (2), Kenneth L Lay (3); granting 273 Motion to Quash Subpoena as to Kenneth L Lay (3).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 02/18/2005) |
| 02/18/05 | 295 | ORDER denying 155 Motion for Bill of Particulars as to Richard A Causey (1); denying 154 Motion for Bill of Particulars as to Jeffrey K Skilling (2); denying 157 Motion for Bill of Particulars as to |

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| | | Kenneth L Lay (3); denying 157 Motion to Strike as to Kenneth L Lay (3).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 02/18/2005) |
| 02/24/05 | 300 | Minute Entry for proceedings held before Judge Sim Lake :HEARING re: Scheduling and Discovery Matters as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay held on 2/24/2005. Appearances: Sean Berkowitz, Bruce Hiler, Mark Holscher, Mark J Hulkower, Linda Lacewell, Chip B Lewis, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: F. Warner) , filed.(hcarr, ) (Entered: 02/25/2005) |
| 02/24/05 | 301 | SCHEDULING ORDER as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay. Dfense Motion Filing due by 6/10/2005; Gov't Production of Experts Reports du by 9/16/05; Gov't Witness List possessing potentially exculpatory informantion due by 10/14/2005; Deft Expert Reports due by 10/21/2005; Notice of 404(b) Evidence due by 11/4/2005; Gov't Trial Exhibits |

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| | | due by 11/4/2005; Gov't Witness List due by 11/18/2005; Deft Trial Exhibits due by 12/2/2005; Jencks Act Material due by 12/9/2005; Deft Trial Witness List due by 12/16/2005; Motions in Limine due by 12/9/2005; Responses due by 1/9/2006; Jury Selection set for 1/17/2006 at 01:00 PM in Courtroom 9B before Judge Sim Lake ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 02/25/2005) |
| 03/10/05 | 304 | MAIL RETURNED UNDELIVERABLE re: 223 as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay as to US Attorney Samuel W Buell, filed. (ncavazos, ) (Entered: 03/11/2005) |
| 03/16/05 | 306 | TRANSCRIPT filed in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay Scheduling Conference held on 2/24/05 before Judge Sim Lake. Court Reporter: F. Warner, filed. (espencer, ) (Entered: 03/16/2005) |
| 03/24/05 | 308 | Twenty Third STATUS REPORT by Richard A Causey, USA, Jeffrey K Skilling, Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(ckrus, ) (Entered: |

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| | | 03/25/2005) |
| 03/25/05 | 307 | MEMORANDUM regarding superseding indictments by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay , filed.(ckrus, ) (Entered: 03/25/2005) |
| 03/28/05 | 309 | RESPONSE by Jeffrey K Skilling re 307 Memorandum regarding superseding indictments, filed.(ncavazos, ) (Entered: 03/28/2005) |
| 03/31/05 | 310 | LETTER as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re: Enron Emails , filed. (ctaylor, ) (Entered: 04/04/2005) |
| 04/04/05 | 313 | MEMORANDUM in Support by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 312 Response , filed. (Attachments: # 1 Exhibit 1# 2 Exhibit 1 Continued# 3 Exhibit 2-5# 4 Exhibit 6-10)(ctaylor, ) (Entered: 04/07/2005) |
| 04/06/05 | 311 | ORDER as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay Scheduling Conference set for 4/15/2005 at 03:30 PM in Courtroom 9B before Judge Sim Lake( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: |

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| | | 04/06/2005) |
| 04/06/05 | 314 | MOTION to ESTABLISH DEADLINES FOR PRODUCTION OF DEFENSE DISCOVERY by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order) (svaught, ) (Entered: 04/07/2005) |
| 04/14/05 | 318 | Sealed Letter Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay by Attorney David M Petrocelli BAR CODE 4:05CI1139, filed.(ncavazos, ) (Entered: 04/20/2005) |
| 04/21/05 | 319 | Minute Entry for proceedings held before Judge Sim Lake :SCHEDULING CONFERENCE as to Kenneth L Lay held on 4/21/2005. Status Conference set for 5/19/2005 at 3:00 P.M. Appearances:John Houston, Sean Berkowitz, Matt Fredrick, G. Seacrest, B. Collins. Mark Holscher, Mark J Hulkower, Chip B Lewis, Daniel M Petrocelli, Michael Wayne Ramsey, Reid H Weingarten, Ronald Gene Woods.(Court Reporter: C. Barron) , filed. (hcarr, ) (Entered: 04/22/2005) |
| 04/21/05 | | Set/Reset Hearings as to Richard |

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| | | A Causey, Jeffrey K Skilling, Kenneth L Lay: Status Conference set for 5/19/2005 at 03:00 PM in Courtroom 9B before Judge Sim Lake (hcarr, ) (Entered: 04/22/2005) |
| 04/21/05 | 322 | TWENTY-FOURTH JOINT STATUS REPORT by Richard A Causey, USA, Jeffrey K Skilling, Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(ctaylor, ) (Entered: 04/26/2005) |
| 04/25/05 | 321 | ORDER as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay Status Conference set for 5/18/2005 at 03:00 PM in Courtroom 9B before Judge Sim Lake. Joint Status Report due 5/16/2005.( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 04/26/2005) |
| 04/29/05 | 323 | RESPONSE in Opposition by Jeffrey K Skilling re 314 MOTION , filed. (Attachments: # 1 Attachment)(svaught ) (Entered: 04/29/2005) |
| 05/02/05 | 325 | TRANSCRIPT filed in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay - Scheduling Conference held on 04/21/05 before Judge Sim Lake. |

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| | | Court Reporter: Cheryll Barron , filed. (phandley, ) (Entered: 05/02/2005) |
| 05/10/05 | 326 | MOTION to Modify bail condition 7(J) by Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(ncavazos, ) (Entered: 05/10/2005) |
| 05/10/05 | 327 | MEMORANDUM in Support by Jeffrey K Skilling re 326 MOTION to Modify , filed.(ncavazos, ) (Entered: 05/10/2005) |
| 05/10/05 | 328 | Sealed Document as to Jeffrey K Skilling, filed. Bar Code 4:05CI1634 (jmarchand, ) (Entered: 05/11/2005) |
| 05/11/05 | 329 | REPLY MEMORANDUM in Support by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 314 MOTION to Establish Deadlines for Production of Defense Discovery, filed.(jmarchand, ) (Entered: 05/11/2005) |
| 05/12/05 | 330 | MOTION for Bill of Particulars MEMORANDUM IN SUPPORT OF MOTION by Jeffrey K Skilling, filed. (Attachments: # 1 Exhibit A-D# 2 Exhibit E-F# 3 Exhibit G-H# 4 Exhibit I-L# 5 Proposed Order)(svaught, ) |

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| | | (Entered: 05/12/2005) |
| 05/16/05 | 331 | TWENTY-FIFTH JOINT STATUS REPORT Regarding State of Discovery by Richard A Causey, USA, Jeffrey K Skilling, Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(jmarchand, ) (Entered: 05/16/2005) |
| 05/17/05 | 333 | MOTION for Leave to Exceed the page limit in Support of Motion to Compel Production of Exculpatory and Rule 16 Materials by Jeffrey K Skilling, filed. (Attachments: # 1 Declaration of Amber Jene Sayle in Support# 2 Proposed Order)(sfedele, ) (Entered: 05/18/2005) |
| 05/17/05 | 334 | VOLUME I OF II - DECLARATION of Amber Jene Sayle in Support of Defendant Jeffrey K Skilling's (Docket Entry 335) Motion to Compel Production of Exculpatory and Rule 16 Materials, filed. (Attachments: # 1 Attachment Part 1 of Declaration# 2 Attachment Part 2 of Declaration# 3 Attachment 3 of Declaration# 4 Attachment Part 4 of Declaration# 5 Attachment Part 5 of Declaration# 6 Attachment Part 6 of Declaration# 7 |

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| | | Attachment Part 7 of Declaration# 8 Attachment Part 8 of Declaration# 9 Attachment Part 9 of Declaration# 10 Attachment Part 10 of Declaration# 11 Attachment Part 11 of Declaration)(ncavazos, ) Additional attachment(s) added on 5/18/2005 (ncavazos, ). Modified on 5/18/2005 (ncavazos, ). Modified on 5/18/2005 (ncavazos, ). (Entered: 05/18/2005) |
| 05/17/05 | 335 | MOTION to Compel production of exculpatory and rule 16 materials; memorandum in suport thereof by Jeffrey K Skilling, filed. (Attachments: # 1 Attachment Part 2 of 2 of Mtn/to Compel# 2 Proposed Order)(ncavazos, ) (Entered: 05/18/2005) |
| 05/17/05 | 337 | Sealed Document as to Jeffrey K Skilling BAR CODE 4:05CI1403, filed. (ncavazos, ) (Entered: 05/18/2005) |
| 05/17/05 | 338 | Sealed Document as to Jeffrey K Skilling BAR CODE 4:05CI1404, filed. (ncavazos, ) (Entered: 05/18/2005) |
| 05/17/05 | 339 | VOLUME II OF II - DECLARATION of Amber Jene Sayle in support of Jeffrey K Skilling re 335 MOTION to Compel , filed. (Attachments: # 1 |

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| | | Exhibit 20 Part 2 of 12# 2 Exh 20 Tab A, Exh's 21, 22 & 23 Part 3 of 12# 3 Exh 23 cont'd Exh's 24, 25, & 27# 4 Exh 27 cont'd, Exh 28 & 29 Part 5 of 12# 5 Exh 30, 31 Part 6 of 12)(ncavazos, ) Modified on 5/18/2005 (ncavazos, ). Additional attachment(s) added on 5/18/2005 (ncavazos, ). (Entered: 05/18/2005) |
| 05/17/05 | 341 | ORDER granting 333 Motion for Leave to Exceed the Page Limit in Support of Motion to Compel Production of Exculpatory and Rule 16 Materials as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 05/18/2005) |
| 05/18/05 | 336 | LETTER as to Jeffrey K Skilling re: Outstanding privilege issues that have been the subject of recent correspondence between parties. , filed. (sfedele, ) (Entered: 05/18/2005) |
| 05/18/05 | 340 | RESPONSE in Opposition by USA as to Jeffrey K Skilling re 326 MOTION to Modify , filed. (Attachments: # 1 Proposed Order)(ncavazos, ) (Entered: 05/18/2005) |
| 05/18/05 | 342 | Minute Entry for proceedings held before Judge Sim Lake :MOTION |

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| | | HEARING as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay held on 5/18/2005. Granting 314 MOTION to establish deadlines and 326 MOTION to Modify Bail Conditions as stated on the record. Status Conference set for 6/30/2005 at 2:00 p.m. Appearances:J. Houston, S. Berkowitz, M. Fredrich, M. Secrest. Bruce Hiler, Mark J Hulkower, Chip B Lewis, Daniel M Petrocelli, Michael Wayne Ramsey.(Court Reporter: G. Dye) , filed.(hcarr, ) (Entered: 05/19/2005) |
| 05/18/05 | 343 | ORDER granting 314 Motion to Establish Deadlines for Production of Defense Discovery as to Richard A Causey (1), Jeffrey K Skilling (2), Kenneth L Lay (3).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 05/19/2005) |
| 05/23/05 | 344 | TRANSCRIPT filed in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay; scheduling conference held on 5/18/05 before Judge Sim Lake. Court Reporter: Gayle Dye , filed. (cpeebles) (Entered: 05/23/2005) |
| 05/24/05 | 345 | MOTION Proposed Orders |

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| | | regarding bail modification and equal access to witnesses by Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Orders regarding bail modification# 2 Proposed order regarding equal access to witnesses)(ncavazos, ) (Entered: 05/24/2005) |
| 05/25/05 | 346 | ORDER Regarding Bail Modifications.(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 05/25/2005) |
| 05/25/05 | 347 | Corrected PROPOSED ORDER regarding Equal Access to Witnesses as to Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(sfedele, ) (Entered: 05/25/2005) |
| 05/25/05 | 348 | RESPONSE to Deft's Skilling's Proposed Orders Regarding Bail Modification and Equal Access to Witnesses by USA as to Jeffrey K Skilling , filed. (Attachments: # 1 Proposed Order)(sfedele, ) (Entered: 05/25/2005) |
| 05/26/05 | 349 | MEMORANDUM in Support by Jeffrey K Skilling 347 Proposed Order Regarding Equal Access to Witnesses, filed.(jmarchand, ) (Entered: 05/26/2005) |
| 05/27/05 | 351 | ORDER for potential witnesses as |

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| | | to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 05/27/2005) |
| 06/02/05 | 352 | MOTION for Extension of Time to File Response/Reply as to Defendant's Skilling's Motion to Compel Production of Exculpatory by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(svaught, ) (Entered: 06/02/2005) |
| 06/02/05 | 353 | MEMORANDUM OF LAW in response by USA as to Jeffrey K Skilling re 330 MOTION for Bill of Particulars , filed.(ncavazos, ) (Entered: 06/02/2005) |
| 06/03/05 | 354 | ORDER granting 352 Motion for Extension of Time to File Response/Reply as to Richard A Causey (1), Jeffrey K Skilling (2), Kenneth L Lay (3). (Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 06/03/2005) |
| 06/03/05 | 355 | JOINT UNOPPOSED MOTION for Extension of Time to File Defense Motions by Jeffrey K Skilling as to Richard A Causey, |

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| | | Jeffrey K Skilling, Kenneth L Lay, filed. (svaught) Modified on 6/3/2005 (svaught). (Entered: 06/03/2005) |
| 06/09/05 | 356 | ORDER granting 355 MOTION for Extension of Time to File Defense Motions as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay Motion Filing due by 7/1/2005( Signed by Judge Sim Lake ). Parties notified. (dhansen) (Entered: 06/10/2005) |
| 06/09/05 | 357 | REPLY MEMORANDUM in Support by Jeffrey K Skilling re 330 Further MOTION for Bill of Particulars , filed. (Attachments: # 1 Proposed Order) (ncavazos, ) (Entered: 06/10/2005) |
| 06/10/05 | 358 | MOTION for Leave to Exceed the Page Limit by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(ctaylor, ) (Entered: 06/10/2005) |
| 06/10/05 | 359 | GOVERNMENTS MEMORANDUM OF LAW IN RESPONSE TO DEFENDANTS SKILLINGS MOTION TO COMPEL PRODUCTION OF EXCULPATORY AND RULE 16 MATERIALS as to Richard A |

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| | | Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Exhibit 1 thru 2# 2 Exhibit 3 thru 6)(ctaylor, ) (Entered: 06/10/2005) |
| 06/14/05 | 360 | ORDER denying 330 Motion for Bill of Particulars as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 06/14/2005) |
| 06/15/05 | 361 | ORDER granting 358 Motion for Leave to File Government's Memorandum of Law in Response to Defendant Skilling's Motion to Compel as to Richard A Causey (1), Jeffrey K Skilling (2), Kenneth L Lay (3).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 06/15/2005) |
| 06/16/05 | 362 | JOINT STATUS REPORT REGARDING STATE OF DISCOVERY UNDER RULE 16 Richard A Causey, USA, Jeffrey K Skilling, Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (ctaylor, ) (Entered: 06/16/2005) |
| 06/22/05 | 366 | MEMORANDUM in Support by Jeffrey K Skilling re 364 Response in Support , filed. (Attachments: # 1 Continuation Tabs C-E # 2 |

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| | | Continuation Tabs F-K # 3 Continuation Tabs L-R # 4 Continuation Tab S)(jmarchand, ) (Entered: 06/23/2005) |
| 06/23/05 | 363 | MOTION for Leave to Exceed Page Limit in Reply in Support of Motion to Compel Production by Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(jmarchand, ) (Entered: 06/23/2005) |
| 06/23/05 | 364 | RESPONSE in Support by Jeffrey K Skilling re 335 MOTION to Compel , filed. (Attachments: # 1 Proposed Order)(jmarchand, ) (Entered: 06/23/2005) |
| 06/23/05 | 365 | ORDER granting 363 Motion for Leave to exceed the page limit as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 06/23/2005) |
| 06/23/05 | 367 | MEMORANDUM in Support by Jeffrey K Skilling re 364 Response in Support , filed. (Attachments: # 1 Continuation Tab 1 # 2 Continuation Tab 1 - Continued # 3 Continuation Tabs 2-3 # 4 Continuation Tab 4 # 5 Continuation Tab 5)(jmarchand, ) Additional attachment(s) added on 6/23/2005 (jmarchand, ). Additional attachment(s) added |

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| | | on 6/23/2005 (jmarchand, ). Additional attachment(s) added on 6/23/2005 (jmarchand, ). (Entered: 06/23/2005) |
| 06/27/05 | 368 | MEMORANDUM OPINION AND ORDER Granting in Part, Denying in Part 335 Motion to Compel as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 06/27/2005) |
| 06/29/05 | 369 | NOTICE of Filing by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay , filed.(ctaylor, ) (Entered: 06/29/2005) |
| 06/30/05 | 370 | Unopposed MOTION for Bond *Defendant Richard A. Causey's Unopposed Motion to Substitute Bond and Incorporated Memorandum* by Richard A Causey as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Stennes, Matthew) (Entered: 06/30/2005) |
| 06/30/05 | | Documents submitted to court for In-Camera Review as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay: , filed. (ctaylor, ) (Entered: 06/30/2005) |

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| 06/30/05 | 371 | SEALED MOTION by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. Bar Code 4:05CI2014 (jmarchand, ) (Entered: 06/30/2005) |
| 06/30/05 | 372 | SEALED ORDER granting 371 Sealed Motion as to Richard A Causey (1), Jeffrey K Skilling (2), Kenneth L Lay (3).(Signed by Judge Sim Lake.) Parties notified.(jmarchand, ) (Entered: 06/30/2005) |
| 07/01/05 | 374 | TRANSCRIPT filed in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay; scheduling conference held on 6/30/05 before Judge Sim Lake. Court Reporter: Kathy Metzger , filed. (cpeebles) (Entered: 07/01/2005) |
| 07/01/05 | 375 | Minute Entry for proceedings held before Judge Sim Lake :Status Conference as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay held on 7/1/2005 Scheduling Conference set for 7/29/2005 at 04:00 PM in Courtroom 9B before Judge Sim Lake. Appearances:C. Lewis, M. Secrest. Mark Holscher, Mark J Hulkower, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn |

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| | | H Ruemmler.(Court Reporter: K. Metzger) , filed.(hcarr, ) (Entered: 07/01/2005) |
| 07/01/05 | 376 | MOTION for Joinder *Defendant Richard A. Causey's Joinder in Various* Defense *Motions* by Richard A Causey as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Stennes, Matthew) (Entered: 07/01/2005) |
| 07/01/05 | 377 | MOTION for Joinder *Defendant Richard A. Causey's Joinder in Jeffrey K.* Skilling's *Motion to Dismiss Insider Trading Counts and Request to Extend Motion to Counts 52 and 53 (Joinder in Defense Motion No. 5) with [Proposed] Order* by Richard A Causey as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Stennes, Matthew) (Entered: 07/01/2005) |
| 07/01/05 | 378 | Opposed MOTION to Dismiss Count(s) *Defendant Richard A. Causey's* Motion *to Dismiss Counts 21, 22, 24, 25, 26, 28 & 29 (The Analyst Call Counts) for Failure to State an Offense and Failure to Allege an Offense with Specificity (Defense Motion No. 7); Memorandum in Support; [Proposed] Order* by Richard A |

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| | | Causey as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Stennes, Matthew) (Entered: 07/01/2005) |
| 07/01/05 | 381 | JOINT REQUEST/ MOTION for Leave to File Motion to dismiss based on prosecutorial misconduct by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(ncavazos, ) (Entered: 07/01/2005) |
| 07/01/05 | 384 | MOTION for Discovery of Information Pertaining to Unindicted Co-Conspirators by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(jmarchand, ) (Entered: 07/01/2005) |
| 07/01/05 | 387 | Joinder in Support of Defendant Kenneth Lay's Motion for Discovery of Information Pertaining to Unindicted Co-Conspirators by Jeffrey K Skilling re 384 MOTION for Discovery, filed.(svaught) (Entered: 07/05/2005) |
| 07/01/05 | 389 | MOTION to Dismiss Count(s) Forty-Two through Fifty-One (Insider Trading Counts) by Jeffrey |

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| | | K Skilling, filed. (Attachments: # 1 Proposed Order)(jmarchand, ) (Entered: 07/05/2005) |
| 07/01/05 | 390 | MOTION to Dismiss Count(s) Three Through Six (The "Raptors" Wire Fraud Counts) by Richard A Causey, Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(jmarchand, ) (Entered: 07/05/2005) |
| 07/01/05 | 391 | MEMORANDUM in Support by Richard A Causey, Jeffrey K Skilling re 390 MOTION to Dismiss Count(s) , filed.(jmarchand, ) (Entered: 07/05/2005) |
| 07/01/05 | 392 | JOINDER by Jeffrey K Skilling as to Kenneth L Lay re 386 MOTION to Dismiss Count(s), 383 MOTION to Dismiss Count(s) , filed.(jmarchand, ) (Entered: 07/05/2005) |
| 07/01/05 | 394 | MOTION to Dismiss Count(s) Twenty-Three, Twenty-Four and Twenty-Six, MOTION to Strike Various Allegations as Prejudicial Surplusage by Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(jmarchand, ) (Entered: 07/05/2005) |
| 07/01/05 | 395 | MEMORANDUM in Support by |

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| | | Jeffrey K Skilling re 394 MOTION to Dismiss Count(s) and MOTION to Strike Various Allegations as Prejudicial Surplusage , filed.(jmarchand, ) (Entered: 07/05/2005) |
| 07/01/05 | 396 | Table of Exhibits and Exhibits in Support of 394 Motion to Dismiss Count (s) and Motion to Strike as to Jeffrey K Skilling, filed.(jmarchand, ) Additional attachment(s) added on 7/5/2005 (jmarchand, ). (Entered: 07/05/2005) |
| 07/01/05 | 397 | JOINDER by Jeffrey K Skilling as to Richard A Causey re 378 MOTION to Dismiss Count(s) , filed. (Attachments: # 1 Proposed Order)(jmarchand, ) (Entered: 07/05/2005) |
| 07/01/05 | 1223 | MOTION to Dismiss Counts Twelve and Thirteen of the Indictment (Defense Motion One) by Kenneth L Lay as to Jeffrey K Skilling, filed. (Attachments: # 1 Continuation)(hler, ) (Entered: 06/06/2007) |
| 07/06/05 | 398 | MOTION for Joinder *Defendant Richard A. Causey's Joinder in Motion for* Discovery *of Information Pertaining to Unindicted Co-Conspirators* by |

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| | | Richard A Causey as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Stennes, Matthew) (Entered: 07/06/2005) |
| 07/06/05 | 399 | Joint Statement in Support of Proposed Order re: Issuance of Rule 17(c) Subpoenas by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Continuation # 2 Proposed Order)(jmarchand, ) (Entered: 07/07/2005) |
| 07/07/05 | 400 | PROTECTIVE ORDER as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 399 Statement filed by Kenneth L Lay, ( Signed by Judge Sim Lake ). Parties notified. (jmarchand, ) (Entered: 07/07/2005) |
| 07/07/05 | 401 | ORDER granting 399 Statement for Issuance of Rule 17(c) Subpoenas as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay ( Signed by Judge Sim Lake ). Parties notified. (jmarchand, ) (Entered: 07/07/2005) |
| 07/13/05 | 402 | MAIL RETURNED UNDELIVERABLE re: 400 sent to Samuel W. Buell as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay , filed. (jmarchand, |

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| | | ) (Entered: 07/15/2005) |
| 07/14/05 | 403 | Joint MOTION for Extension of Time to File Response/Reply related to Defense Motions by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(jmarchand, ) (Entered: 07/15/2005) |
| 07/14/05 | 405 | TWENTY SEVENTH JOINT STATUS REPORT by Richard A Causey, USA, Jeffrey K Skilling, Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(ctaylor, ) (Entered: 07/15/2005) |
| 07/18/05 | 406 | MOTION for Leave to File Amicus Brief regarding motion to dismiss w/Amicus Brief and Proposed Order by Jeffrey K Skilling filed. (Attachments: # 1 Proposed Order)(ncavazos, ) Modified on 7/18/2005 (ncavazos, ). (Entered: 07/18/2005) |
| 07/18/05 | 407 | AMICUS CURIAE BRIEF by Jeffrey K Skilling re 394 MOTION to Dismiss Count(s) MOTION to Strike Various Allegations as Prejudicial Surplusage , filed. (Attachments: # 1 Part 2 of 2)(ncavazos, ) (Entered: 07/18/2005) |

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| 07/22/05 | 410 | MAIL RETURNED UNDELIVERABLE as to Samuel W. Buell (Attempted not known) re: 401 , filed. (kmurphy, ) (Entered: 07/22/2005) |
| 07/29/05 | | Attorney update in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay. Attorney Sean Berkowitz for USA; John C. Hueston USA added. (ncavazos, ) (Entered: 07/29/2005) |
| 07/29/05 | 412 | NOTICE OF ATTORNEY APPEARANCE Sean Berkowitz, Kathryn H Ruemmler appearing and John C. Hueston for USA. , filed.(ncavazos, ) (Entered: 07/29/2005) |
| 07/29/05 | 413 | Minute Entry for proceedings held before Judge Sim Lake :MOTION HEARING as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay held on 7/29/2005. DENYING 381 MOTION for Leave to File MOTION to Dismiss, for the reasons stated on the record; GRANTING 406 MOTION for Leave to File Amicus Brief, for the reasons stated on the record. Govt shall file updated list of alleged co-conspirators by 10/14/2005. Mr. Kooper's atty shall produce a |

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| | | privilege log of documents or records on his computer as stated on the record. Mr. Petrocelli's request for an order directing the govt to supplement the list of hot documents is DENIED for the reasons stated on the record. Court describes and discussed courtroom logistics for trial. Mr. Lay and the govt announce their agreement that deadlines for the bank fraud case will be the same as deadlines in main case. A scheduling conference shall be held at 1:30 p.m. on Thursday, 09/01/2005. Appearances:J. Huston, Mr. Secrest, Sean Berkowitz, Mark J Hulkower, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez) , filed. (dhansen, ) (Entered: 08/01/2005) |
| 07/29/05 | | Set/Reset Hearings as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay: Scheduling Conference set for 9/1/2005 at 01:30 PM in Courtroom 9B before Judge Sim Lake. (dhansen) (Entered: 08/01/2005) |
| 07/29/05 | 414 | ORDER granting 406 Motion for Leave to File Amicus Curiae Brief |

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| | | as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified. (dhansen) (Entered: 08/01/2005) |
| 08/01/05 | 415 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. BAR CODE 4:05CI1813(ncavazos, ) (Entered: 08/01/2005) |
| 08/01/05 | 416 | Consolidated RESPONSE to Motion by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 381 MOTION for Leave to File, 403 MOTION for Extension of Time to File Response/Reply, 406 MOTION for Leave to File Amicus Brief, 384 MOTION for Discovery, 394 MOTION to Dismiss Count(s) MOTION to Strike Various Allegations as Prejudicial Surplusage, 382 MOTION to Dismiss Count(s), 383 MOTION to Dismiss Count(s), 376 MOTION for Joinder *Defendant Richard A. Causey's Joinder in Various Defense Motions*, 386 MOTION to Dismiss Count(s), 398 MOTION for Joinder *Defendant Richard A. Causey's Joinder in Motion for Discovery of Information Pertaining to Unindicted Co-* |

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| | | *Conspirators*, 377 MOTION for Joinder *Defendant Richard A. Causey's Joinder in Jeffrey K. Skilling's Motion to Dismiss Insider Trading Counts and Request to Extend Motion to Counts 52 and 53 (Joinder in Defense Motion No. 5) with [Proposed] Order*, 378 Opposed MOTION to Dismiss Count(s) *Defendant Richard A. Causey's Motion to Dismiss Counts 21, 22, 24, 25, 26, 28 & 29 (The Analyst Call Counts) for Failure to State an Offense and Failure to Allege an Offense with Specificity (Defense Motion No., 390 MOTION to Dismiss Count(s), 389 MOTION to Dismiss Count(s) , filed.(ncavazos, ) Modified on 8/1/2005 (ncavazos, ). (Entered: 08/01/2005)* |
| 08/09/05 | 419 | TRANSCRIPT filed in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay; pretrial hearing held on 7/29/05 before Judge Sim Lake. Court Reporter: Johnny Sanchez , filed. (cpeebles) (Entered: 08/09/2005) |
| 08/12/05 | 420 | NOTICE of Joinder by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay , filed.(ctaylor, ) (Entered: 08/12/2005) |

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| 08/12/05 | 421 | MOTION for Leave to File To Exceed Page Limit by Jeffrey K Skilling, filed. (ctaylor, ) Additional attachment(s) added on 8/12/2005 (ctaylor, ). (Entered: 08/12/2005) |
| 08/12/05 | 422 | REPLY TO RESPONSE to Motion by Richard A Causey as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 378 MOTION to Dismiss Count(s) *Causey's Reply Memorandum in Support of Motion to Dismiss Counts 21, 22, 24, 25, 26, 28, & 29 (The Analyst Call Counts)*, filed. (Stennes, Matthew) (Entered: 08/12/2005) |
| 08/12/05 | 423 | ORDER Granting 421 Motion for Leave to Exceed Page Limit on Reply Memorandum in Support of Motion to Dismiss Counts as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 08/15/2005) |
| 08/12/05 | 426 | REPLY MEMORANDUM in Support by Jeffrey K Skilling re 389 MOTION to Dismiss Count(s) forty-two through fifty-one, filed. (Attachments: # 1 Part 2 of 2)(ncavazos, ) (Entered: 08/15/2005) |
| 08/12/05 | 427 | MEMORANDUM in Support by Jeffrey K Skilling re 390 MOTION |

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| | | to Dismiss Count(s) , filed. (Attachments: # 1 Part 2 of Memorandum in Support# 2 Part 3 Memorandum in Support# 3 Part 4 of Memorandum in Support# 4 Part 5 of Memorandum in Support# 5 Part 6 of 6 in Memorandum in Support)(ncavazos, ) (Entered: 08/15/2005) |
| 08/12/05 | 433 | SUGGESTION OF ORAL ARGUMENT as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order) (ncavazos, ) (Entered: 08/15/2005) |
| 08/12/05 | 434 | REPLY MEMORANDUM in Support by Jeffrey K Skilling re 394 MOTION to Dismiss Count(s) 23, 24 and 26 and Motion Strike Various Allegations as Prejudicial Surplusage , filed.(ncavazos, ) (Entered: 08/15/2005) |
| 08/16/05 | 436 | Twenty-Eight Joint STATUS REPORT regarding state of discovery under Rule 16 by Richard A Causey, USA, Jeffrey K Skilling, Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(ncavazos, ) (Entered: |

| Filed | # | Docket Text |
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| | | 08/17/2005) |
| 08/23/05 | 438 | ORDER Denying 384 Motion for Discovery of Information Pertaining to Unindicted Co-Conspirators.(Signed by Judge Sim Lake.) Parties notified. (hcarr, ) (Entered: 08/23/2005) |
| 09/01/05 | 440 | JOINT SEALED MOTION by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay,BAR CODE 4:05CI2189 filed. (ctaylor, ) (Entered: 09/01/2005) |
| 09/01/05 | 441 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay filed BAR CODE 4:05CI2191, filed.(ctaylor, ) (Entered: 09/01/2005) |
| 09/01/05 | 442 | MOTION to Exceed Page Limit by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (hcarr, ) (Entered: 09/01/2005) |
| 09/01/05 | 443 | Minute Entry for proceedings held before Judge Sim Lake :SCHEDULING CONFERENCE as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay held on 9/1/2005. Hearing set for 9/8/2005 at 03:30 PM in Courtroom 9B before Judge Sim Lake Appearances:J. Hueston, L. Wise, B. Adkins, M. Klein, M. Secrest. |

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| | | Sean Berkowitz, Chip B Lewis, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Matthew L Stennes.(Court Reporter: B. Slavin) , filed.(hcarr, ) (Entered: 09/01/2005) |
| 09/01/05 | 444 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L LayBAR CODE 4:05CI2192, filed.(ctaylor, ) (Entered: 09/02/2005) |
| 09/01/05 | 445 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay4:05CI2193, filed.(ctaylor, ) (Entered: 09/02/2005) |
| 09/01/05 | 446 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay 4:05CI2194, filed.(ctaylor, ) (Entered: 09/02/2005) |
| 09/01/05 | 447 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay BAR CODE 4:05CI2195, filed.(ctaylor, ) (Entered: 09/02/2005) |
| 09/01/05 | 448 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay BAR CODE 4:05CI2196, filed.(ctaylor, ) (Entered: 09/02/2005) |

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| 09/01/05 | 449 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay BAR CODE 4:05CI2197, filed.(ctaylor, ) (Entered: 09/02/2005) |
| 09/01/05 | 450 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay BAR CODE 4:05CI2198, filed.(ctaylor, ) (Entered: 09/02/2005) |
| 09/01/05 | 451 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay BAR CODE 4:05CI2199, filed.(ctaylor, ) (Entered: 09/02/2005) |
| 09/01/05 | 452 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay BAR CODE 4:05CI2200, filed.(ctaylor, ) (Entered: 09/02/2005) |
| 09/01/05 | 453 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay BAR CODE 4:05CI2201, filed.(ctaylor, ) (Entered: 09/02/2005) |
| 09/01/05 | 454 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay BAR CODE 4:05CI2202, filed.(ctaylor, ) (Entered: 09/02/2005) |
| 09/02/05 | 455 | Joint Submission regarding |

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| | | procedures to facilitate defense access to witnesses by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay , filed. (ckrus, ) (Entered: 09/02/2005) |
| 09/02/05 | 456 | REDACTED JOINT MOTION to Dismiss and Memorandum in Support by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Continuation)(hcarr, ) (Entered: 09/06/2005) |
| 09/02/05 | 457 | REDACTED DECLARATION of Michael E. Tigar in support of 456 Defendants' Joint Motion to Dismiss as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Exhibit 1)(hcarr, ) (Entered: 09/06/2005) |
| 09/06/05 | 458 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. Bar Code 4:05CI3008(jmarchand, ) (Entered: 09/07/2005) |
| 09/06/05 | 459 | SEALED MOTION with Proposed Order by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. Bar Code 4:05CI3010 (jmarchand, ) (Entered: 09/07/2005) |
| 09/07/05 | 460 | REDACTED VERSION |

| Filed | # | Docket Text |
|---|---|---|
| | | RESPONSE to Defendant's Joint Submission Regarding Procedure to Facilitate Defense Access to Witness by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(chorace, ) (Entered: 09/08/2005) |
| 09/07/05 | 464 | Sealed Document by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. Bar Code 4:05CI3027(jmarchand, ) (Entered: 09/12/2005) |
| 09/07/05 | 466 | RESPONSE by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay to govt's motion to unseal the declarations of attys A-F submitted in support of defts' joint motion to dismiss the indictment for prosecutorial misconduct, filed.(ckrus, ) (Entered: 09/15/2005) |
| 09/08/05 | 461 | Minute Entry for proceedings held before Judge Sim Lake :HEARING regarding Defendants' attempt to interview witneses as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay held on 9/8/2005 Scheduling Conference set for 9/29/2005 at 03:00 PM in Courtroom 9B before Judge Sim Lake. Appearances:Matt Klein, B. Collins, M. Secrest. Sean |

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| | | Berkowitz, Chip B Lewis, Daniel M Petrocelli, Michael Wayne Ramsey, Ronald Gene Woods. (Court Reporter: E. Reed) , filed.(hcarr, ) (Entered: 09/08/2005) |
| 09/09/05 | 462 | TRANSCRIPT filed in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay; scheduling conference held on 9/1/05 before Judge Sim Lake. Court Reporter: Bruce Slavin, filed. (cpeebles) (Entered: 09/09/2005) |
| 09/09/05 | 463 | TRANSCRIPT filed in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay; motion hearing held on 9/8/05 before Judge Sim Lake. Court Reporter: Edward Reed, filed. (cpeebles) (Entered: 09/09/2005) |
| 09/12/05 | 465 | JOINT MEMORANDUM in Support of Their Proposed Witness Access Letters by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 461 Miscellaneous Hearing, Set Hearings, filed. (Attachments: # 1 Exhibit D# 2 Exhibit D)(ghassan, ) (Entered: 09/13/2005) |
| 09/19/05 | 467 | MOTION for Extension of Time to |

| Filed | # | Docket Text |
|---|---|---|
| | | File Response to Defendant's Motion to Dismiss Based on Prosecutorial Misconduct by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(chorace, ) (Entered: 09/19/2005) |
| 09/27/05 | 469 | Joint Statement in Support of their proposed jury questionnaire by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Part 2 of Statement in Support# 2 Part 3 of Statement in Support# 3 Part 4 of 4 of Statement in Support)(ncavazos, ) (Entered: 09/27/2005) |
| 09/27/05 | 470 | Declaration of Brian C Devine in support of Defendants' Joint Statement in support of their proposed jury questionnaire (docket entry #469) as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Part 2 of Declaration in Support# 2 Part 3 of Declaration in Support# 3 Part 4 of Declaration in Support# 4 Part 5 of Declaration in Support# 5 Part 6 of Declaration in Support# 6 Part 7 of 7 of |

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|---|---|---|
| | | Declaration in Support) (ncavazos, ) (Entered: 09/28/2005) |
| 09/27/05 | 471 | Declaration of Jennifer Lapinski in support of Defendants' Joint Statement in support of their proposed jury questionnaire (Docket Entry #469) as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Continued Vol 1 of 2 of Declaration# 2 Continued Vol 1 of 2 of Declaration# 3 Continued Vol 1 of 2 of Declaration# 4 Continued Vol 1 of 2 of Declaration# 5 Continued Vol 1 of 2 of Declaration# 6 Continued Vol 1 of 2 of Declaration# 7 Continued Vol 1 of 2 of Declaration# 8 Last Continuation of Vol 1 of 2 of Declaration)(ncavazos, ) (Entered: 09/28/2005) |
| 09/27/05 | 472 | Declaration of Jennifer Lapinski in support of Defendants' Joint Statement in support of their proposed jury questionnaire as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Continued Vol 2 of 2 - Part 2# 2 Continued Vol 2 of 2 - Part 3# 3 Continued Vol 2 of 2 - Part 4# 4 Continued Vol 2 of 2 - |

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| | | Part 5# 5 Continued Vol 2 of 2 - Part 6# 6 Continued Vol 2 of 2 - Part 7# 7 Continued Vol 2 of 2 - Part 8# 8 Final Continuation of Vol 2 of 2 Part 9 of 9)(ncavazos, ) (Entered: 09/28/2005) |
| 09/27/05 | 474 | MOTION to Compel Immediate Production of All Exculpatory Materials by Jeffrey K Skilling, filed. (mkallie, ) (Entered: 09/29/2005) |
| 09/27/05 | 475 | Government's Filing of Proposed Questions for Venire and Objections to Defendants' Proposed Questionnaires as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (jmarchand, ) (Entered: 09/29/2005) |
| 09/28/05 | 473 | RESPONSE to the Task Force's Jury Questionaire Submission, by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay , filed.(psmith, ) (Entered: 09/29/2005) |
| 09/28/05 | 476 | BRIEF RESPONSE by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 469 Joint Statement in Support of Their Proposed Jury Questionnaire, , filed.(jmarchand, ) (Entered: 09/30/2005) |

| **Filed** | **#** | **Docket Text** |
|---|---|---|
| 09/29/05 | 477 | Minute Entry for proceedings held before Judge Sim Lake :HEARING re: Witness Letters and Juror Questionairres as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay held on 9/29/2005 Scheduling Conference set for 10/27/2005 at 03:00 PM in Courtroom 9B before Judge Sim Lake. Appearances:J. Hueston, R. Adkins, J. Brennan, C. Sticklin, B. Collins, M. Secrest. Sean Berkowitz, Chip B Lewis, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Reid H Weingarten, Ronald Gene Woods.(Court Reporter: F. Warner) , filed.(hcarr, ) (Entered: 09/30/2005) |
| 09/29/05 | 478 | ORDER Copies of all responses to the Court's September 14, 2005 Letter will be filed under Seal.( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 09/30/2005) |
| 10/03/05 | 479 | SEALED MOTION by Jeffrey K Skilling, filed. BAR CODE 4:05CI2886 (ctaylor, ) (Entered: 10/04/2005) |
| 10/05/05 | 480 | Sealed Letters as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(ctaylor, ) (Entered: |

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| | | 10/05/2005) |
| 10/05/05 | 481 | Production of Hot Documents and Accompanying Index as to Jeffrey K Skilling, filed.(ckrus, ) (Entered: 10/07/2005) |
| 10/07/05 | 482 | TRANSCRIPT filed in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay; scheduling conference held on 9/29/05 before Judge Sim Lake. Court Reporter: Fred Warner , filed. (cpeebles) (Entered: 10/07/2005) |
| 10/07/05 | 483 | Joint Submission of Their Revised Jury Questionnaire by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Continuation) (jmarchand, ) (Entered: 10/07/2005) |
| 10/07/05 | 485 | MEMORANDUM of Law in Response by USA as to Jeffrey K Skilling re 474 MOTION to Compel Immediate Production of All Exculpatory Materials , filed. (Attachments: # 1 Exhibit A# 2 Exhibit A - Continued) (jmarchand, ) (Entered: 10/13/2005) |
| 10/07/05 | 487 | FURTHER OBJECTIONS by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 483 |

| Filed | # | Docket Text |
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| | | Proposed Voir Dire , filed.(jmarchand, ) (Entered: 10/13/2005) |
| 10/11/05 | 484 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. BAR CODE 4:05CI2906(ctaylor, ) (Entered: 10/12/2005) |
| 10/11/05 | 488 | REPLY to Government's 487 Further Objections to Proposed Jury Questionnaire, by Jeffrey K Skilling as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(ltien, ) (Entered: 10/14/2005) |
| 10/11/05 | 492 | REPLY MEMORANDUM in Support by Jeffrey K Skilling re 474 MOTION to Compel , filed.(ddarneille, ) (Entered: 10/16/2005) |
| 10/13/05 | 486 | ORDER denying 474 Motion to Compel Immediate Production of All Exculpatory Materials as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake ) Parties notified.(djustice, ) (Entered: 10/13/2005) |
| 10/13/05 | 491 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay. BAR CODE 4:05CI2910, filed.(ctaylor, ) (Entered: 10/14/2005) |

| **Filed** | **#** | **Docket Text** |
|---|---|---|
| 10/14/05 | 489 | ORDER granting Govt's Request for Leave to File a Redacted copy of its Response to Defts' Motion to Dismiss Based on Prosecutorial Misconduct as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay. ( Signed by Judge Sim Lake ) Parties notified. (djustice, ) (Entered: 10/14/2005) |
| 10/14/05 | 490 | Sealed Document by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(djustice, ) CORRECTION: THIS DOCUMENT IS NOT SEALED - IT HAS BEEN FILED UNSEALED AS #493 - REDACTED OPPOSITION BY USA TO MTN TO DISMISS BASED ON PROSECUTORIAL MISCONDUCT. Modified on 12/8/2005 (djustice, ). (Entered: 10/14/2005) |
| 10/14/05 | 493 | REDACTED Opposition by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 456 MOTION to Dismiss based on Prosecutorial misconduct, filed.(ncavazos, ) (Entered: 10/17/2005) |
| 10/17/05 | 494 | ORDER denying 394 Motion to Dismiss Counts 23, 24, 26 as to Jeffrey K Skilling (2); denying 394 |

| Filed | # | Docket Text |
|---|---|---|
| | | Motion to Strike Various Allegations as Prejudicial Surplusage as to Jeffrey K Skilling (2); denying 386 Motion to Dismiss the Securities Fraud and Wire Fraud Counts of the Second Superseding Indictment as to Kenneth L Lay (3).(Signed by Judge Sim Lake) Parties notified.(djustice, ) (Entered: 10/17/2005) |
| 10/18/05 | 495 | MOTION for Brady Materials by Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(ctaylor, ) Additional attachment(s) added on 10/20/2005 (ncavazos, ). Additional attachment(s) added on 10/20/2005 (ncavazos, ). (Entered: 10/20/2005) |
| 10/25/05 | 497 | SEALED ORDER as to Jeffrey K Skilling, entered and placed in vault. ( Signed by Judge Sim Lake ). Parties notified. (ctaylor, ) (Entered: 10/27/2005) |
| 10/26/05 | 504 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. BAR CODE 4:05CI3589(ctaylor, ) (Entered: 10/31/2005) |
| 10/27/05 | 499 | Minute Entry for proceedings held before Judge Sim Lake :HEARING |

| Filed | # | Docket Text |
|---|---|---|
| | | re: Various issues as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay held on 10/27/2005. Appearances:M. Kline; M. Secrest, B. Collins. Sean Berkowitz, Chip B Lewis, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Reid H Weingarten, Ronald Gene Woods.(Court Reporter: B. Slavin) , filed.(hcarr, ) (Entered: 10/27/2005) |
| 10/27/05 | | Set/Reset Hearings as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay: Conference set for 11/18/2005 at 03:30 PM in Courtroom 9B before Judge Sim Lake. Miscellaneous Hearing set for 1/4/2006 at 02:00 PM at Courtroom 9B before Judge Sim Lake.... (hcarr, ) (Entered: 10/27/2005) |
| 10/27/05 | 505 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. BAR CODE 4:05CI3592(ctaylor, ) (Entered: 10/31/2005) |
| 10/27/05 | 506 | RESPONSE in Opposition by USA as to Jeffrey K Skilling re 495 MOTION for Brady Materials , filed.(jdavenport, ) (Entered: 11/01/2005) |
| 11/02/05 | 508 | MEMORANDUM in Support by |

| **Filed** | **#** | **Docket Text** |
|---|---|---|
| | | Jeffrey K Skilling re 495 MOTION for Brady Materials , filed.(ctaylor, ) (Entered: 11/08/2005) |
| 11/02/05 | 509 | TABLE OF EXHIBITS to Reply 508 Memorandum in Support as to Jeffrey K Skilling , filed. (Attachments: # 1 Part 2 to Memorandum in Support (Exhibit A) (2) Part 3 to Memorandum in Support# 3 Part 4 to Memorandum in Support# 4 Part 5 to Memorandum in Support# 5 Part 6 of Memorandum in Support# 6 Part 7 of Memorandum in Support# 7 Part 8 Memorandum in Support# 8 Part 9 of 9 (Exhibits B,C, & D ) of Memorandum in Support) (ncavazos, ) (Entered: 11/08/2005) |
| 11/03/05 | 507 | ORDER denying 495 MOTION for Brady Materials as to Jeffrey K Skilling, ( Signed by Judge Sim Lake ) Parties notified. (djustice, ) (Entered: 11/03/2005) |
| 11/04/05 | 512 | Revised Statement in Compliance With Court's Order Dated November 2, 2004 by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(ctaylor, ) (Entered: 11/10/2005) |

| **Filed** | **#** | **Docket Text** |
|---|---|---|
| 11/04/05 | 513 | MOTION for Notice of Govt Intent to Use Evidence by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order # 2 Exhibit)(mkallie, ) (Entered: 11/10/2005) |
| 11/09/05 | 510 | TRANSCRIPT filed in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay; scheduling conference held on 10/27/05 before Judge Sim Lake. Court Reporter: Bruce Slavin , filed. (cpeebles) (Entered: 11/09/2005) |
| 11/15/05 | 531 | RETURN of Subpoena Executed on 11/11/05 to Christopher Mead as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Stennes, Matthew) (Entered: 11/15/2005) |
| 11/17/05 | 534 | ORDER granting United States' Motion for a Protective Order as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay ( Signed by Judge Sim Lake ). Parties notified. (fwilliams) (Entered: 11/17/2005) |
| 11/17/05 | 537 | MOTION for Protective Order by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order) (jmarchand, ) (Entered: |

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| | | 11/18/2005) |
| 11/18/05 | 535 | Third MOTION to Modify *Third Joint Motion of the United States and* Defendant *Richard A. Causey to Modify the Court's Post-Indictment Restraining Order* by Richard A Causey as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Stennes, Matthew) (Entered: 11/18/2005) |
| 11/18/05 | 538 | MOTION to Preclude Expert Testimony and Other Evidence Concerning Alleged Prosecutorial Misconduct by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (jmarchand, ) (Entered: 11/18/2005) |
| 11/18/05 | 539 | Minute Entry for proceedings held before Judge Sim Lake :MISCELLANEOUS HEARING as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay held on 11/18/2005 Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Reid H Weingarten, Ronald Gene Woods. (Court Reporter: F. Warner) Deft continued on Bond, filed.(hcarr, ) (Entered: 11/21/2005) |
| 11/23/05 | 541 | Joint Unopposed MOTION to |

| Filed | # | Docket Text |
|---|---|---|
| | | Conduct Proceedings In Camera and Under Seal by Wade Stubblefield, Michael Anderson, Larry Lawyer, Rodney L Faldyn as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed with proposed order BAR CODE 4:05CI3659(ncavazos, ) Additional attachment(s) added on 12/2/2005 (jmarchand, ). UNSEALED per Order 557 Modified on 12/2/2005 (jmarchand, ). (Entered: 11/28/2005) |
| 11/23/05 | 542 | MOTION to Seal by Wade Stubblefield, Michael Anderson, Larry Lawyer, Rodney L Faldyn as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. BAR CODE 4:05CI3658(ncavazos, ) Additional attachment(s) added on 12/2/2005 (jmarchand, ). UNSEALED per Order 557 Modified on 12/2/2005 (jmarchand, ). (Entered: 11/28/2005) |
| 11/28/05 | 544 | MOTION with Proposed Order by Wade Stubblefield, Larry Lawyer as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. Bar Code 4:05CI4032 (jmarchand, ) Additional attachment(s) added on 12/2/2005 (jmarchand, ). UNSEALED per Order 557 |

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| | | Modified on 12/2/2005 (jmarchand, ). (Entered: 11/28/2005) |
| 11/28/05 | 545 | UN-Sealed pursuant to Order of 11/28/05 - Memorandum in support of Joint unopposed motion to conduct proceedings in camera and under seal Additional attachment(s) added on 11/30/2005 (ncavazos, ). zos, ). (Entered: 11/28/2005) |
| 11/28/05 | 546 | SEALED ORDER as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re: 544 Movant's Motion to Seal 545 IS DENIED, entered and placed in vault. ( Signed by Judge Sim Lake ). BAR CODE 4:05CI3663 Parties notified. (ncavazos, ) (Entered: 11/29/2005) |
| 11/28/05 | 547 | RETURN of Subpoena Executed on 11/28/2005 to Innovation Communications Inc/ Beth Stier as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (ctaylor, ) (Entered: 11/29/2005) |
| 11/29/05 | 551 | Governments Position Re: Court's Proposed Order Relating To Out-OfCourt Statements By The Parties by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(ctaylor, ) (Entered: 11/30/2005) |

| Filed | # | Docket Text |
|---|---|---|
| 11/30/05 | 549 | SEALED ORDER as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re: 542 Movant's Motion to Seal, entered and placed in vault. ( Signed by Judge Sim Lake ). BAR CODE 4:05CI3668 Parties notified. (ncavazos, ) (Entered: 11/30/2005) |
| 11/30/05 | 552 | TRANSCRIPT filed in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay; scheduling conference held on 11/18/05 before Judge Sim Lake. Court Reporter: Fred Warner, filed. (cpeebles) (Entered: 11/30/2005) |
| 11/30/05 | 559 | MOTION to Unseal Documents And For Access To Proceedings 544 SEALED MOTION, 541 SEALED MOTION, 542 SEALED MOTION by Houston Chronicle, Associated Press as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order) (ypippin, ) (Entered: 12/05/2005) |
| 12/01/05 | 554 | SEALED MOTION with Proposed Order by Wade Stubblefield, Michael Anderson, Larry Lawyer, Rodney L Faldyn as to Richard A Causey, Jeffrey K Skilling, |

| **Filed** | **#** | **Docket Text** |
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| | | Kenneth L Lay, filed. Bar Code 4:05CI3934 (jmarchand, ) (Entered: 12/01/2005) |
| 12/01/05 | 555 | RESPONSE by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 534 Order , filed.(ncavazos, ) (Entered: 12/02/2005) |
| 12/01/05 | 556 | Minute Entry for proceedings held before Judge Sim Lake :EVIDENTIARY HEARING as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay held on 12/1/2005.Scheduling Conference set for 12/16/2005 at 03:30 PM in Courtroom 9B before Judge Sim Lake. Appearances:Sean Berkowitz, Chip B Lewis, Matt Kline, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Matthew L Stennes, Reid H Weingarten, Ronald Gene Woods.(Court Reporter: C. Barron) , filed. (hcarr, ) (Entered: 12/02/2005) |
| 12/01/05 | 557 | Order to Unseal Documents 544 , 541 , 542 as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay ( Signed by Judge Sim Lake ). Parties notified. (jmarchand, ) (Entered: 12/02/2005) |
| 12/01/05 | 558 | SEALED ORDER granting 554 |

| Filed | # | Docket Text |
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| | | Sealed Motion as to Richard A Causey (1), Jeffrey K Skilling (2), Kenneth L Lay (3).(Signed by Judge Sim Lake.) Parties notified. Bar Code 4:05CI3730(jmarchand, ) (Entered: 12/02/2005) |
| 12/09/05 | 561 | TRANSCRIPT filed in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay; evidentiary hearing held on 12/1/05 before Judge Sim Lake. Court Reporter: Cheryll Barron , filed. (cpeebles) (Entered: 12/09/2005) |
| 12/09/05 | 564 | SEALED MOTION w/proposed orderby USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. BAR CODE 4:05CI4052 (ncavazos, ) (Entered: 12/12/2005) |
| 12/09/05 | 565 | MOTION in Limine To Exclude Task Force Exhibit 1901 And Any Ohter Evidence And Argument Based On Testimony Obtained From Him During The Securities And Exchange Commission's Investigation, In The Matter of Eron Corp by Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order # 2 Exhibit # 3 Exhibit # 4 Exhibit)(ctaylor, ) (Entered: 12/12/2005) |
| 12/09/05 | 572 | MOTION to preclude arguement |

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| | | or evidence designed to elcit jury nullification by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Exhibit 1 of Motion# 2 Continued Exhibits) (ncavazos, ) (Entered: 12/14/2005) |
| 12/09/05 | 573 | MOTION preclude introduction of polygraph evidence or testimony by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (ncavazos, ) (Entered: 12/14/2005) |
| 12/09/05 | 574 | CONSOLIDATED MOTION for adequate disclosure and to preclude or limit expert testimony by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Continued attachment to Motion# 2 Proposed Order)(ncavazos, ) (Entered: 12/14/2005) |
| 12/09/05 | 575 | MOTION in Limine to preclude certain evidence in the trial of counts 38 through 41by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(ncavazos, ) (Entered: 12/14/2005) |
| 12/09/05 | 579 | DUPLICATE DOCKETING (this motion appears at Docket Entry |

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| | | #572) MOTION preclude argument or eivdence designed to elecit jury nullification by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (ncavazos, ) Modified on 12/14/2005 (ncavazos, ). (Entered: 12/14/2005) |
| 12/09/05 | 580 | MOTION in Limine to preclude extrinsic evidence and limit cross examination regarding witness Andrew S. Fastowby USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(ncavazos, ) (Entered: 12/14/2005) |
| 12/09/05 | 582 | CONSOLIDATED MOTION in Limine to exclude certain defense arguments and evidence by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(ckrus, ) (Entered: 12/14/2005) |
| 12/12/05 | 566 | Sealed Exhibits as to Jeffrey K Skilling, filed.(ctaylor, ) (Entered: 12/12/2005) |
| 12/12/05 | 581 | MOTION to Unseal Transcript of Hearing by Houston Chronicle, Associated Press as to Richard A Causey, Jeffrey K Skilling, |

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| | | Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(ncavazos, ) (Entered: 12/14/2005) |
| 12/13/05 | 567 | MOTION to Quash subpoena, MOTION to Stay compliance by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 continuation# 2 Proposed Order)(ckrus, ) (Entered: 12/13/2005) |
| 12/13/05 | 568 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed by Michael J Hinton BAR CODE 4:05CI4053(ncavazos, ) (Entered: 12/13/2005) |
| 12/13/05 | 569 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. as to Order returned undeliverable BAR CODE 4:05CI4054 (ncavazos, ) (Entered: 12/13/2005) |
| 12/13/05 | 570 | REQUEST FOR IMMEDIATE RELIEF - Joint MOTION for Disclosure of Exculpatory (1) Grand Jury and SEC Transcripts, (2) FBI 302's and interview notes, and (3) other exculpatory source materials afor witnesses listed on the task |

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| | | force's Brady Witness and co-conspirator lists by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (ncavazos, ) Modified on 12/13/2005 (ncavazos, ). (Entered: 12/13/2005) |
| 12/13/05 | 571 | Sealed Document as to Motion #570 as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.BAR CODE 4:05CI4056(ncavazos, ) (Entered: 12/13/2005) |
| 12/15/05 | 584 | REQUEST/ MOTION that the court issue an order relating to out-of-court statements by the parties by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (ncavazos, ) (Entered: 12/15/2005) |
| 12/15/05 | 588 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. Bar Code: 4:05CI4105.(ghassan, ) (Entered: 12/16/2005) |
| 12/16/05 | 585 | ORDER granting 537 MOTION for Protective Order as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 12/16/2005) |
| 12/16/05 | 587 | Joint Opposition RESPONSE to |

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| | | Motion by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 567 MOTION to Quash subpoena MOTION to Stay , filed.(hlerma, ) (Entered: 12/16/2005) |
| 12/16/05 | 589 | MOTION in Limine No. 5 Regarding Legal Conclusions and Use of Guilty Pleas and Plea Agreements by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Appendix 1-2; # 2 Exhibit A-B; # 3 Exhibit C-D (Exhibit D filed under seal - Bar Code 4:05CI4107); # 4 Proposed Order) (jmarchand, ) (Entered: 12/16/2005) |
| 12/16/05 | 590 | Opposed MOTION in Limine *to exclude findings and conclusions of wilmer investigation and bankruptcy examiner and to exclude evidence of transactions or valuations performed in connection with the bankruptcy* by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Stennes, Matthew) (Entered: 12/16/2005) |
| 12/16/05 | 591 | MOTION in Limine #6 to Exclude All Evidence Concerning Allegations of Unlawful Trading Strategies and Market |

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| | | Manipulation in California by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(Exhibits filed under seal - Bar Code 4:05CI4106) (jmarchand, ) (Entered: 12/16/2005) |
| 12/16/05 | 592 | MOTION re: the Task's Force Andrew Fastow Jencks Production by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Exhibit B-G; # 2 Exhibit H-L (Exhibits C-L filed under seal - Bar Code 4:05CI4109); # 3 Proposed Order)(jmarchand, ) (Entered: 12/16/2005) |
| 12/16/05 | 593 | SUPPLEMENTAL MEMORANDUM in Support by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 592 MOTION re: the Task Force's Andrew Fastow Jencks Production , filed.(jmarchand, ) (Entered: 12/16/2005) |
| 12/16/05 | 594 | Minute Entry for proceedings held before Judge Sim Lake :MINUTE ENTRY re: Various Matters as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay held on 12/16/2005, Outstanding |

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| | | Juror Questionnaires will be accepted until but not after December 22, 2005 at 4:00 p.m. Motions terminated as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay: GRANTING IN PART AND DENYING IN PART as stated on the record 532 MOTION to Quash Rule 17(c) subpoena served by Kenneth L. Lay filed by Goldman Sachs & Co, GRANTING IN PART AND DENYING IN PART as stated on the record 567 MOTION to Quash subpoena MOTION to Stay filed by USA, GRANTING IN PART AND DENYING IN PART as stated on the record 540 MOTION to Quash Rule17(c) Subpoena Served On Goldman Sachs By Kenneth L. Lay. Appearances:R. Woods, M. Kline, M. Secrest, J. Hueston, C. Strickland, Sean Berkowitz, Bruce Hiler, Mark J Hulkower, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Reid H Weingarten.(Court Reporter: C. Barron) Defts continued on Bond, filed.(dhansen) (Entered: 12/19/2005) |
| 12/16/05 | 595 | SEALED MOTION by Richard A |

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| | | Causey, Jeffrey K Skilling, Kenneth L Lay, filed.Bar Code 4:05CI3966 (ctaylor, ) (Entered: 12/19/2005) |
| 12/16/05 | 596 | SEALED MOTION by Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. Bar Code 4:05CI3967 (ctaylor, ) (Entered: 12/19/2005) |
| 12/16/05 | 597 | RESPONSE To Defendant's joint motion for disclosure of source materials for brady and co-conspirator lists by USA as to Jeffrey K Skilling re 592 MOTION , filed.(mharrison, ) (Entered: 12/20/2005) |
| 12/20/05 | 598 | TRANSCRIPT filed in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay Status Conference held on 12/16/05 before Judge Sim Lake. Court Reporter: C. Barron , filed. (espencer, ) (Entered: 12/21/2005) |
| 12/21/05 | 599 | Sealed Document as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. Bar Code 4:05CI4061(jmarchand, ) (Entered: 12/21/2005) |
| 12/22/05 | 600 | MOTION for Access to Jury Questionaires that have been excluded on hardship Grounds by |

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| | | Jeffrey K Skilling as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order) (rroberts, ) (Entered: 12/27/2005) |
| 12/22/05 | 601 | MEMORANDUM in Support by Jeffrey K Skilling re 570 MOTION for Disclosure , filed.(rroberts, ) (Entered: 12/27/2005) |
| 12/22/05 | 602 | MOTION for Leave to File Subpoenas by Jeffrey K Skilling, filed. (rroberts, ) Additional attachment(s) added on 12/27/2005 (rroberts, ). (Entered: 12/27/2005) |
| 12/23/05 | 611 | Proposed Examination of Prospective Jurors by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (rroberts, ) Modified on 1/7/2006 - changed description of document (rwestmoreland, ). (Entered: 12/29/2005) |
| 12/28/05 | 606 | Minute Entry for proceedings held before Judge Sim Lake :STATUS CONFERENCE as to Jeffrey K Skilling, Kenneth L Lay held on 12/28/2005. Govt to submit amended witness list by 1/6/06 and revised exhibit list by 1/13/06. Deft's Motion for Access to questionnaires 600 is granted as |

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| | | stated on the record. Deft's Motion for Leave to Serve Rule 17(c) subpoenas [602} is APPROVED as to paragraphs 1-5 and REJECTED as to paragraph 6 subject to the inclusion of language that the subpoenas may be challenged by recipients. Jury Selection set for 1/30/2006 at 09:00 AM in Courtroom 9B before Judge Sim Lake Appearances:J. Hueston, C. Strickland, M. Kline, M. Secrest, B. Collins,. Sean Berkowitz, Chip B Lewis, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: K. Metzger) Deft continued on Bond, filed.(dhansen, ) (Entered: 12/28/2005) |
| 12/28/05 | 607 | ORDER denying 570 Motion for Disclosure as to Richard A Causey (1), Jeffrey K Skilling (2), Kenneth L Lay (3).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 12/29/2005) |
| 12/28/05 | 608 | ORDER on 567 Government's Emergency Motion to Stay Compliance with and Quash Rule 17(c) Subpoena as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay ( Signed by Judge |

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| | | Sim Lake ). Parties notified. (hcarr, ) (Entered: 12/29/2005) |
| 12/28/05 | 610 | ORDER Granting Defendants' Motion to File Under Seal Defendants' Motion in Limine to Exclude Testimony from Former Enron Employees. ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 12/29/2005) |
| 12/28/05 | 613 | Stipulation Regarding Prospective Jurors by Jeffrey K Skilling, Kenneth L Lay, filed.(ctaylor, ) (Entered: 12/30/2005) |
| 12/29/05 | 609 | MEMORANDUM OPINION AND ORDER Denying 389 MOTION to Dismiss Count(s). Denying 397 Joinder in Defendants Richard A. Causey's Motion to Dismiss Count(s). ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 12/29/2005) |
| 12/30/05 | 615 | Government's OPPOSITION to Defts 592 MOTION Regarding the Task Force's Andrew Fastow Jencks Production , filed.(psmith, ) (Entered: 01/04/2006) |
| 01/03/06 | 622 | RESPONSE to Motion by USA as to Jeffrey K Skilling, Kenneth L Lay re 565 MOTION in Limine, filed. (Attachments: # 1 Exhibit A - |

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| | | C# 2 Exhibit D - G)(ghassan, ) (Entered: 01/05/2006) |
| 01/04/06 | 617 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; status conference held on 12/28/05 before Judge Sim Lake. Court Reporter: Kathy Metzger, filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (akennedy, ). (Entered: 01/04/2006) |
| 01/04/06 | 618 | RENEWED MOTION to Change Venue and Related Relief by Jeffrey K Skilling, Kenneth L Lay, filed. (Sealed Exhibits filed - Bar Code 4:05CI3895) (Exhibits to Follow on 1/5/2006) (jmarchand, ) Modified on 1/4/2006 (jmarchand, ). Additional attachment(s) added on 1/6/2006 (ncavazos, ). Additional attachment(s) added on 1/6/2006 (ncavazos, ). Additional attachment(s) added on 1/6/2006 (ncavazos, ). (Entered: 01/04/2006) |
| 01/04/06 | 619 | Remaining Veniremen Roster as to Jeffrey K Skilling, Kenneth L Lay, filed. (dhansen) (Entered: 01/05/2006) |
| 01/04/06 | 621 | Minute Entry for proceedings held before Judge Sim Lake :HEARING held on Juror Questionnaires as |

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| | | to Jeffrey K Skilling, Kenneth L Lay on 1/4/2006. Govt shall have two hours for opening statements and each deft shall have two hours. Defts Motion in Limini 565 is DENIED for the reasons as stated on the record. Deadline for proposed voir dire questions is 01/20/2006. Govt shall have 6 strikes. Defts shall have 12 strikes combined. Mr. Lay's request for information regarding Govt's ex parte filing under seal date 12/29/2005 is DENIED for the reasons stated on the record. Mr. Lay's request for early receipt of Jenks Act material is DENIED for reasons stated on the record. Hearing to be held on 01/12/2006 at 3:00 p.m. Appearances:C. Stricklund, M. Kline, B. Collins, M. Secrest. Sean Berkowitz, Mark Holscher, Chip B Lewis, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: C. Barron) Deft continued on Bond, filed.(dhansen, ) (Entered: 01/05/2006) |
| 01/04/06 | | Set/Reset Hearings as to Jeffrey K Skilling, Kenneth L Lay:. Miscellaneous Hearing set for 1/12/2006 at 03:00 PM at Courtroom 9B before Judge Sim |

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| | | Lake. (dhansen, ) (Entered: 01/05/2006) |
| 01/04/06 | 623 | REPLY MEMORANDUM in Support by Jeffrey K Skilling, Kenneth L Lay re 592 MOTION , filed. (Attachments: # 1 Continued Part 2# 2 Continued Part 3# 3 Continued Part 4# 4 Continued Part 5# 5 Continued Part 6# 6 Continued Part 7)(ncavazos, ) Additional attachment(s) added on 1/6/2006 (ncavazos, ). (Entered: 01/06/2006) |
| 01/04/06 | 625 | OBJECTION by Jeffrey K Skilling, Kenneth L Lay re 611 Proposed Examination of Prospective Jurors and ALTERNATIVE PROPOSED EXAMINATION OF PROSPECTIVE JURORS, filed. (Attachments: # 1 Exhibit A# 2 Exhibit B)(rwestmoreland, ) (Entered: 01/07/2006) |
| 01/04/06 | 626 | Reply in Support by Jeffrey K Skilling, Kenneth L Lay re 565 MOTION in Limine , filed.(jdavenport, ) (Entered: 01/07/2006) |
| 01/06/06 | 624 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; status conference held on 1/4/06 before Judge Sim Lake. Court |

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| | | Reporter: Cheryll K. Barron, filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (akennedy, ). (Entered: 01/06/2006) |
| 01/09/06 | 627 | MOTION for Disclosure Of Exculpatory Source Materials For Witness John Lavoratoby Jeffrey K Skilling, filed. Exhibit B filed under seal. Bar Code: 4:05CI4123. (Attachments: # 1 Proposed Order)(ghassan, ) (Entered: 01/09/2006) |
| 01/09/06 | 628 | MEMORANDUM OPINION AND ORDER Denying 440 Joint Motion to Dismiss as to Jeffrey K Skilling, Kenneth L Lay ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 01/09/2006) |
| 01/09/06 | 630 | RESPONSE in Opposition by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 590 Opposed MOTION in Limine *to exclude findings and conclusions of Wilmer investigation and bankruptcy examiner and to exclude evidence of transactions or valuations performed in connection with the bankruptcy* , filed.(ltien, ) (Entered: 01/10/2006) |
| 01/09/06 | 631 | RESPONSE in Opposition by |

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| | | USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 589 MOTION in Limine Regarding Guilty Pleas, filed.(ltien, ) (Entered: 01/10/2006) |
| 01/09/06 | 633 | Sealed Document as to Jeffrey K Skilling, Kenneth L Lay, filed. Bar Code 4:05CI3773(jmarchand, ) (Entered: 01/10/2006) |
| 01/09/06 | 634 | RESPONSE in Opposition by USA as to Jeffrey K Skilling, Kenneth L Lay re 591 MOTION in Limine , filed. (Attachments: # 1 Exhibit)(ypippin, ) (Entered: 01/11/2006) |
| 01/09/06 | 635 | Sealed Document as to Jeffrey K Skilling, Kenneth L Lay, filed. Bar Code 4:05CI4124 (jmarchand, ) (Entered: 01/11/2006) |
| 01/09/06 | 642 | OPPOSITION TO TASK FORCES 14 IN LIMINE MOTIONS as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Part 2# 2 Part 3# 3 Part 4)(ctaylor, ) (Entered: 01/17/2006) |
| 01/09/06 | 644 | DECLARATION in Support by Jeffrey K Skilling's attorney Mark Holscher as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 642 opposition to task force's motion in limine to exclude |

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| | | evidence of polygraph , filed.(ncavazos, ) (Entered: 01/18/2006) |
| 01/09/06 | 645 | Table of Exhibits by Jeffrey K Skilling, Kenneth L Lay re 642 opposition to the task force's 14 in Limine Motions , filed. (Attachments: # 1 Part 2 of Table of Exhibits# 2 Part 3 of Table of Exhibits# 3 Part 4 of Table of Exhibits# 4 Part 5 of Table of Exhibits# 5 Part 6 of Table of Exhibits# 6 Part 7 of Table of Exhibits# 7 Part 8 of 8 of Table of Exhibits)(ncavazos, ) (Entered: 01/18/2006) |
| 01/11/06 | 636 | NOTICE of Change of Address by U S Department of Justice as to Richard A Causey, Jeffrey K Skilling. filed.(mkallie, ) (Entered: 01/12/2006) |
| 01/11/06 | 637 | Stipulation Regarding Prospective Jurors by Jeffrey K Skilling, Kenneth L Lay, USA (Enron Task Force) , filed.(mkadlubowski, ) (Entered: 01/12/2006) |
| 01/11/06 | 638 | MEMORANDUM in Support by Jeffrey K Skilling, Kenneth L Lay re 618 MOTION to Change Venue, filed.(kmurphy, ) (Entered: 01/12/2006) |

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| 01/12/06 | 639 | MEMORANDUM OPINION AND ORDER Granting 573 Government's Motion in Limine as to Jeffrey K Skilling, Kenneth L Lay ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 01/12/2006) |
| 01/12/06 | 640 | MEMORANDUM OPINION AND ORDER Granting in Part and Denying in Part 591 Defense Motion in Limine No. 6 as to Jeffrey K Skilling, Kenneth L Lay ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 01/12/2006) |
| 01/12/06 | 641 | Minute Entry for proceedings held before Judge Sim Lake :MISCELLANEOUS HEARING as to Jeffrey K Skilling, Kenneth L Lay held on 1/12/2006. Various motions ruled on. Final Pretrial Conference set for 1/26/2006 at 4:00 p.m. in courtroom 9B. Appearances:J. Hueston, C. Strickland, M. Kline, M. Secrest, B. Collins. Sean Berkowitz, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: S. Carlisle) , filed.(hcarr, |

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| | | ) (Entered: 01/13/2006) |
| 01/12/06 | | Set/Reset Hearings as to Jeffrey K Skilling, Kenneth L Lay: Pretrial Conference set for 1/26/2006 at 04:00 PM in Courtroom 9B before Judge Sim Lake.. (hcarr, ) (Entered: 01/13/2006) |
| 01/17/06 | 643 | EMERGENCY MOTION to Compel Production Of Revised Statement In Compliance, MOTION to Continue Trial by Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Proposed Order)(ypippin, ) (Entered: 01/17/2006) |
| 01/17/06 | 647 | MOTION For Access To Originals Of Task Force Trial Exhibits by Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order) (ypippin, ) (Entered: 01/18/2006) |
| 01/17/06 | 648 | LETTER as to Jeffrey K Skilling, Kenneth L Lay re: Request to be seated at the table nearest the witness stand. , filed. (ypippin, ) (Entered: 01/18/2006) |
| 01/17/06 | 649 | MOTION for Reconsideration re 565 MOTION in Limine by Jeffrey K Skilling, filed. (Attachments: # 1 Exhibits B & C |

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| | | of Motion f/reconsideration# 2 Exhibits D & E to Mtn f/Reconsideration# 3 Proposed Order)(ncavazos, ) (Entered: 01/18/2006) |
| 01/17/06 | 650 | Supplemental filing in support by Jeffrey K Skilling, Kenneth L Lay re 618 MOTION to Change Venue and related relief, filed. (Attachments: # 1 Exhibit 4A# 2 Exhibit 4A continued# 3 Exhibit 4B)(ncavazos, ) (Entered: 01/18/2006) |
| 01/18/06 | 651 | RESPONSE in Opposition by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 647 MOTION , filed.(hlerma, ) (Entered: 01/19/2006) |
| 01/18/06 | 652 | MOTION to Quash Rule 17(C) Subpoena Served on Ronald T. Astin by Ronald T Astin, Vinson & Elkins LLP as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (jmarchand, ) (Entered: 01/19/2006) |
| 01/18/06 | 653 | RESPONSE in Opposition by USA as to Jeffrey K Skilling, Kenneth L Lay re 618 MOTION to Change Venue , filed.(ypippin, ) (Entered: 01/19/2006) |
| 01/19/06 | 654 | Further Submission in Support by |

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| | | Jeffrey K Skilling, Kenneth L Lay re 643 MOTION to Compel Production of Revised Statement in Compliance and MOTION to Continue Trial , filed. (Attachments: # 1 Exhibit A; # 2 Exhibit A - continued; # 3 Exhibit A - continued)(jmarchand, ) (Entered: 01/19/2006) |
| 01/19/06 | 655 | RESPONSE in Opposition by Jeffrey K Skilling, Kenneth L Lay as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 652 MOTION to Quash , filed.(jmarchand, ) (Entered: 01/19/2006) |
| 01/19/06 | 656 | REPLY MEMORANDUM in Support by Jeffrey K Skilling, Kenneth L Lay re 618 RENEWED MOTION to Change Venue and Related Relief , filed. (Attachment to Exhibit A - 1/18/2006 edition of USA TODAY - on file for view in the Clerk's Office)(jmarchand, ) (Entered: 01/20/2006) |
| 01/20/06 | 658 | Opposition by USA as to Jeffrey K Skilling re 649 MOTION for Reconsideration re 565 MOTION in Limine , filed.(mmapps, ) (Entered: 01/23/2006) |
| 01/20/06 | 659 | Second Revised Statement in Complaince with Court's Order |

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| | | Dated November 2, 2004 189 by USA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(mmapps, ) (Entered: 01/23/2006) |
| 01/23/06 | 657 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; hearing held on 1/12/06 before Judge Sim Lake. Court Reporter: Stephanie CarlisleNeisser, filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (akennedy, ). (Entered: 01/23/2006) |
| 01/23/06 | 661 | ORDER denying 649 Motion for Reconsideration as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 01/23/2006) |
| 01/23/06 | 662 | ORDER Denying 618 MOTION to Change Venue as to Jeffrey K Skilling, Kenneth L Lay ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 01/23/2006) |
| 01/23/06 | 663 | REPLY MEMORANDUM in Support by Jeffrey K Skilling re 649 MOTION for Reconsideration of Defense re 565 MOTION in Limine , filed. (mkadlubowski, ) (Entered: 01/23/2006) |

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| 01/23/06 | 664 | Supplement In Support Of Their Emergency Motions Of Last Week And In Support Of A Request To Strike Matters And Evidence by Jeffrey K Skilling, Kenneth L Lay , filed. (Attachments: # 1 Exhibit)(ypippin, ) (Entered: 01/23/2006) |
| 01/23/06 | 665 | MOTION for Emergency Hearing re: Scheduling by Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(ltien, ) (Entered: 01/23/2006) |
| 01/23/06 | 666 | MOTION to Clarify Order Regarding Expert Disclosures by Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Exhibit A; # 2 Exhibit B; # 3 Proposed Order)(jmarchand, ) (Entered: 01/23/2006) |
| 01/23/06 | 668 | SEALED MOTION by Jeffrey K Skilling, Kenneth L Lay, filed. BAR CODE 4:05CI3839 (ncavazos, ) (Entered: 01/24/2006) |
| 01/23/06 | 669 | SEALED MOTION by Jeffrey K Skilling, Kenneth L Lay, filed. BAR CODE 4:05CI3840 (ncavazos, ) (Entered: 01/24/2006) |
| 01/23/06 | 670 | Opposition to Defendants' Motion Concerning Courtroom Seating by |

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| | | USA as to Jeffrey K Skilling, Kenneth L Lay re 648 Letter , filed.(jbradford, ) Modified on 1/24/2006 (ghassan, ). (Entered: 01/24/2006) |
| 01/23/06 | 671 | MOTION for Authorization to Establish Procedures to Provide Notice to Victims by USA as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(jbradford, ) (Entered: 01/24/2006) |
| 01/24/06 | 676 | SEALED ORDER as to Jeffrey K Skilling, Kenneth L Lay re:granting 667 , entered and placed in vault. BAR CODE 4:05CI3976 ( Signed by Judge Sim Lake ). Parties notified. (ctaylor, ) (Entered: 01/26/2006) |
| 01/24/06 | 677 | SEALED ORDER as to Jeffrey K Skilling, Kenneth L Lay re:granting 668 , entered and placed in vault. BAR CODE 4:05CI3976( Signed by Judge Sim Lake ). Parties notified. (ctaylor, ) (Entered: 01/26/2006) |
| 01/25/06 | 672 | ORDER denying 647 Motion for Access to Originals of Task Force Trial Exhibits as to Jeffrey K Skilling (2), Kenneth L Lay (3).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 01/25/2006) |

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| 01/25/06 | 673 | ORDER denying 652 Motion to Quash Rule 17(C) Subpoena as to Jeffrey K Skilling (2), Kenneth L Lay (3).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 01/25/2006) |
| 01/25/06 | 674 | MOTION to Stay proceedings pending review of petition for a Writ of Mandamus by Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Part 2 of 2 of Motion to Stay# 2 Proposed Order)(ncavazos, ) (Entered: 01/25/2006) |
| 01/25/06 | 675 | RESPONSE by USA as to Jeffrey K Skilling, Kenneth L Lay re 664 Supplement , filed.(ypippin, ) (Entered: 01/25/2006) |
| 01/26/06 | 678 | ORDER Denying 674 MOTION to Stay as to Jeffrey K Skilling, Kenneth L Lay ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 01/26/2006) |
| 01/26/06 | 679 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; status conference held on 12/28/05 before Judge Sim Lake. Court Reporter: Kathy Metzger , filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (akennedy, ). (Entered: 01/26/2006) |

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| 01/26/06 | 680 | MEMORANDUM OPINION AND ORDER Mooting in part and Denying in part 643 Defendants' Motion to Compel Production of Revised Statement in Compliance and One-Week Continuance as to Jeffrey K Skilling, Kenneth L Lay. ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 01/26/2006) |
| 01/26/06 | 681 | Minute Entry for proceedings held before Judge Sim Lake :PRETRIAL CONFERENCE as to Jeffrey K Skilling, Kenneth L Lay held on 1/26/2006 Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: C. Barron) , filed.(hcarr, ) (Entered: 01/27/2006) |
| 01/26/06 | 682 | Sealed Document as to Jeffrey K Skilling, Kenneth L Lay, filed. BAR CODE 4:05CI3978(ctaylor, ) (Entered: 01/27/2006) |
| 01/26/06 | 683 | Opposition by USA as to Jeffrey K Skilling, Kenneth L Lay re 674 MOTION to Stay proceedings pending review of petition for a writ of mandamus, filed.(ncavazos, |

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| | | ) (Entered: 01/27/2006) |
| 01/26/06 | 684 | REPLY to government's Opposition to defendants further supplement to their emergecny motions and request to strike matters and evidence as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Continued document to Reply)(ncavazos, ) (Entered: 01/27/2006) |
| 01/27/06 | 685 | MOTION to Dismiss Count(s)Three Through Six of the Superseding Indictment as to Defendant Skillingby USA as to Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(ledwards, ) (Entered: 01/27/2006) |
| 01/27/06 | 686 | ORDER granting 685 Motion to Dismiss Counts 3s-6s as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(dhansen, ) (Entered: 01/27/2006) |
| 01/27/06 | 687 | Certificate of Conference by USA as to Jeffrey K Skilling, Kenneth L Lay re 671 MOTION , filed. (smurdock, ) (Entered: 01/27/2006) |
| 01/30/06 | 688 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; pretrial conference held on 1/26/06 before Judge Sim Lake. Court |

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| | | Reporter: Cheryll Barron, filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (akennedy, ). (Entered: 01/30/2006) |
| 01/30/06 | 689 | EMERGENCY MOTION Exemption from Sequestration Order by Sheila McNulty as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (kmurphy, ) (Entered: 01/30/2006) |
| 01/30/06 | 691 | Defendants' Request Relative to Empaneling the Jury by Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(hcarr, ) (Entered: 01/31/2006) |
| 01/30/06 | 692 | Minute Entry for proceedings held before Judge Sim Lake :JURY SELECTION as to Jeffrey K Skilling, Kenneth L Lay held on 1/30/2006 Appearances:J. Hueston, C. Sticklin, M. Secrest, B. Collins. Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez) , filed.(hcarr, ) (Entered: 01/31/2006) |
| 01/31/06 | 690 | TRANSCRIPT filed in case as to |

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| | | Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 1 held on 1/30/06 before Judge Sim Lake. Court Reporter: Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 9/13/2006 (jcraig, ). Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 01/31/2006) |
| 01/31/06 | 694 | ORDER granting 671 Motion for authorization to establish procedures to provide notice to victims as to Jeffrey K Skilling (2), Kenneth L Lay (3). (Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 02/01/2006) |
| 01/31/06 | 695 | Minute Entry for proceedings held before Judge Sim Lake :Second DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 1/31/2006. Mooting 689 Emergency Motion Exemption from Sequestration Order by Sheila McNulty. Adjourned until 2/1/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: G. Dye, J. |

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| | | Sanchez) , filed.(hcarr, ) (Entered: 02/01/2006) |
| 02/01/06 | 693 | DEFENDANTS' MOTION for Preservation of Completed Juror Questionnaires by Jeffrey K Skilling, Kenneth L Lay, filed. (mkallie, ) (Entered: 02/01/2006) |
| 02/01/06 | 696 | Minute Entry for proceedings held before Judge Sim Lake :Third DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 2/1/2006. Adjourned until 2/2/2006 at 8:30 a.m. Appearances:(Court Reporter: G. Dye/ J. Sanchez) , filed.(hcarr, ) (Entered: 02/01/2006) |
| 02/01/06 | 699 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 2 held on 1/31/06 before Judge Sim Lake. Court Reporter: Gayle Dye/Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 02/02/2006) |
| 02/02/06 | 697 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 3 held on 2/1/06 before Judge Sim Lake. Court Reporter: Gayle Dye/Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added |

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| | | on 9/13/2006 (jcraig, ). (Entered: 02/02/2006) |
| 02/02/06 | 698 | ORDER to provide meal to jury and security personnel on January 30, 2006 as to Jeffrey K Skilling, Kenneth L Lay ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 02/02/2006) |
| 02/02/06 | 700 | Stipulation Regarding Evidentary Matters by Jeffrey K Skilling, Kenneth L Lay, filed.(chorace, ) (Entered: 02/03/2006) |
| 02/02/06 | 701 | Minute Entry for proceedings held before Judge Sim Lake :Fourth DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 2/2/2006. Adjourned to 2/6/2006 at 8:30 a.m. Appearances: S. Berkowitz, K. Ruemmler, J. Hueston, C. Stricklin, D. Petrocelli, R. Openheimer, A. Sayle, M. Kline, M. Holscher, M. Ramsey, M. Secrest, C. Lewis, B. collins, L. Vittor(Court Reporter: G. Dye/ J. Sanchez) , filed.(hcarr, ) (Entered: 02/03/2006) |
| 02/02/06 | 703 | Government Submission concerning admission of unredacted tape evidence under Rule 106 as to Jeffrey K Skilling, Kenneth L Lay, filed.(espencer, ) (Entered: |

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| | | 02/03/2006) |
| 02/03/06 | 702 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 4 held on 2/2/06 before Judge Sim Lake. Court Reporter: Gayle Dye/Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 9/13/2006 (jcraig, ). Additional attachment(s) added on 9/13/2006 (jcraig, ). Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 02/03/2006) |
| 02/06/06 | 704 | RESPONSE by Jeffrey K Skilling re 703 Document , filed.(ctaylor, ) (Entered: 02/06/2006) |
| 02/06/06 | 706 | MOTION to Preclude Use Of Indictment In Cross-Examination by USA as to Jeffrey K Skilling, Kenneth L Lay, filed. (ctaylor, ) (Entered: 02/06/2006) |
| 02/06/06 | 707 | MOTION to Reconsider Exclusion of Testimony of Mark Koenig Releated to “Peaker Sales” by USA as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(jmarchand, ) (Entered: 02/06/2006) |
| 02/06/06 | 708 | MOTION to Exclude Defense Witness Rebecca Carter by USA |

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| | | as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order) (ctaylor, ) (Entered: 02/06/2006) |
| 02/06/06 | 710 | Minute Entry for proceedings held before Judge Sim Lake :Fifth DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 2/6/2006. Adjourned until 2/7/2006 at 8:30 a.m. Appearances:J. Hueston, C. Stickland, A. Sayle, B. Collins. Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, John K Villa, Ronald Gene Woods.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 02/07/2006) |
| 02/07/06 | 709 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 5 held on 2/6/06 before Judge Sim Lake. Court Reporter: Cheryll Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 7/20/2006 (mgoolsby, ). (Entered: 02/07/2006) |
| 02/07/06 | 713 | Minute Entry for proceedings held before Judge Sim Lake :Sixth DAY OF JURY TRIAL as to Jeffrey K |

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| | | Skilling, Kenneth L Lay held on 2/7/2006. Adjourned until 2/8/2006 at 8:30 a.m. Appearances:J. Hueston, S. Berkowitz, K. Ruemmler, C. Stickland, D. Petrocelli, R. Woods, R. Oppenheimer, M. Kline, A. Sayle, M. Holscher, M. Ramsey, B. Collins, M. Secrest, C. Lewis, L. Vittor.(Court Reporter: C. Barron/ G. Dye) , filed. (hcarr, ) (Entered: 02/08/2006) |
| 02/08/06 | 712 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 6 held on 2/7/06 before Judge Sim Lake. Court Reporter: Cheryll Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (mgoolsby, ). Additional attachment(s) added on 7/19/2006 (mgoolsby, ). Additional attachment(s) added on 7/19/2006 (mgoolsby, ). (Entered: 02/08/2006) |
| 02/08/06 | 715 | Minute Entry for proceedings held before Judge Sim Lake :Seventh DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 2/8/2006. Adjourned until 2/9/2006 at 8:30 a.m. Appearances:K. Ruemmler, S. |

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| | | Berkowitz, J. Hueston, C. Strickland, D. Petrocelli, R. Woods, R. Oppenheimer, M. Kline, A. Sayle, M. Holscher, M. Ramsey, B. Collins, M. Secrest, C. Lewis.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 02/09/2006) |
| 02/09/06 | 716 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 7 held on 2/8/06 before Judge Sim Lake. Court Reporter: Cheryll Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (mgoolsby, ). (Entered: 02/09/2006) |
| 02/09/06 | 718 | Minute Entry for proceedings held before Judge Sim Lake :8th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 2/9/2006. Adjourned until 2/13/2006 at 8:30 a.m. Appearances:K. Ruemmler, S. Berkowitz, J. Hueston, C. Strickland, D. Petrocelli, M. Kline, R. Woods, R. Oppenheimer, A. Sayle, M. Holscher, M. Ramsey, B. Collins, C. Lewis, L. Vittor, M. Secrest.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 02/10/2006) |

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| 02/10/06 | 717 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 8 held on 2/9/06 before Judge Sim Lake. Court Reporter: Cheryll Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (mgoolsby, ). (Entered: 02/10/2006) |
| 02/13/06 | 720 | RESPONSE in Opposition by Jeffrey K Skilling, Kenneth L Lay re 706 MOTION to Preclude Use Of Indictment In Cross-Examination , filed. (ctaylor, ) (Entered: 02/13/2006) |
| 02/13/06 | 721 | Minute Entry for proceedings held before Judge Sim Lake :9th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 2/13/2006. Adjourned until 2/14/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez, G. Dye) , filed.(hcarr, ) (Entered: 02/14/2006) |
| 02/14/06 | 722 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 9 held on |

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| | | 2/13/06 before Judge Sim Lake. Court Reporter: Johnny Sanchez/Cheryll Barron, filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (mgoolsby, ). (Entered: 02/14/2006) |
| 02/14/06 | 724 | Minute Entry for proceedings held before Judge Sim Lake :10th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 2/14/2006. Adjourned until 2/15/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez/ C. Barron) , filed.(hcarr, ) (Entered: 02/15/2006) |
| 02/15/06 | 723 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 10 held on 2/14/06 before Judge Sim Lake. Court Reporter: Johnny Sanchez/Cheryll Barron, filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (mgoolsby, ). (Entered: 02/15/2006) |
| 02/15/06 | 725 | Minute Entry for proceedings held before Judge Sim Lake :11TH DAY OF JURY TRIAL as to Jeffrey K |

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| | | Skilling, Kenneth L Lay held on 2/15/2006. Appearances:J. Hueston, C. Strikland, Matt Kline, A. Sayle, B. Collins, M. Secrest, L. Vittor, Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez, G. Dye, C. Barron) , filed.(dhansen, ) (Entered: 02/16/2006) |
| 02/16/06 | 726 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 11 held on 2/15/06 before Judge Sim Lake. Court Reporter: Johnny Sanchez/Cheryll Barron, filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (mgoolsby, ). Additional attachment(s) added on 6/4/2007 (pclark, ). Additional attachment(s) added on 6/4/2007 (pclark, ). Additional attachment(s) added on 6/5/2007 (hler, ). Modified on 6/5/2007 (hler, ). (Entered: 02/16/2006) |
| 02/16/06 | 727 | MOTION to Strike defense exhibits 10587, 30728, 144, 223, and 19659 and to exclude futher |

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| | | analysts' reports by USA as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Part 2 of Motion to Strike# 2 Part 3 of Motion to Strike# 3 Proposed Order)(ncavazos, ) (Entered: 02/17/2006) |
| 02/16/06 | 728 | Joint Submission Regarding The Probative Value Of Analyst Reports, Newspaper Articles, Stock Price, and Other Market Data as to Jeffrey K Skilling, Kenneth L Lay, filed.(ctaylor, ) (Entered: 02/17/2006) |
| 02/16/06 | 729 | Minute Entry for proceedings held before Judge Sim Lake :12th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 2/16/2006. Adjourned until 2/21/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez/C. Barron) , filed.(hcarr, ) (Entered: 02/17/2006) |
| 02/17/06 | 730 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 12 held on 2/16/06 before Judge Sim Lake. |

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| | | Court Reporter: Johnny Sanchez/Cheryll Barron, filed. (cpeebles) Additional attachment(s) added on 7/18/2006 (mgoolsby, ). (Entered: 02/17/2006) |
| 02/21/06 | 731 | RESPONSE by USA to Defts' 728 Joint Submission Regarding the Probative Value of Analyst Reports, Newspaper Articles, Stock Price and Other Market Data , filed.(sguevara, ) (Entered: 02/21/2006) |
| 02/21/06 | 735 | RESPONSE in Opposition by USA as to Jeffrey K Skilling, Kenneth L Lay re 727 MOTION to Strike defense exhibits 10587, 30728, 144, 223, and 19659 and to exclude futher analysts' reports , filed.(jbradford, ) (Entered: 02/21/2006) |
| 02/21/06 | 737 | Minute Entry for proceedings held before Judge Sim Lake :13th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 2/21/2006. Adjourned until 2/22/2006 at 8:30 A.M. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: G. |

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| | | Dye/J. Sanchez) , filed.(hcarr, ) (Entered: 02/22/2006) |
| 02/21/06 | 744 | SEALED MOTION and exhibits by Jeffrey K Skilling, Kenneth L Lay, filed. (ncavazos, ) (Entered: 02/24/2006) |
| 02/22/06 | 736 | Sealed TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; proceedings held on 2/21/06 before Judge Sim Lake. Court Reporter: Gayle Dye, filed. (cpeebles) (Entered: 02/22/2006) |
| 02/22/06 | 738 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 13 held on 2/21/06 before Judge Sim Lake. Court Reporter: Gayle Dye/Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 02/22/2006) |
| 02/22/06 | 740 | Minute Entry for proceedings held before Judge Sim Lake :14th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 2/22/2006. Adjourned until 2/23/2006 at 8:30 A.M. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald |

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| | | Gene Woods.(Court Reporter: G. Dye/ J. Sanchez) , filed.(hcarr, ) (Entered: 02/23/2006) |
| 02/23/06 | 739 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 14 held on 2/22/06 before Judge Sim Lake. Court Reporter: Gayle Dye/Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 02/23/2006) |
| 02/23/06 | 741 | Minute Entry for proceedings held before Judge Sim Lake :15th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 2/23/2006. Govt. presents evidence. Adjourned until 02/27/2006 at 8:30 AM. Appearances:J. Hueston, C. Strikland, M. Kline, A. Sayle, B. Collins, M. Secrest, L. Vittor, Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez, G. Dye, C. Barron) , filed.(dhansen, ) (Entered: 02/24/2006) |
| 02/24/06 | 742 | TRANSCRIPT filed in case as to |

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| | | Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 15 held on 2/23/06 before Judge Sim Lake. Court Reporter: Gayle Dye/Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 02/24/2006) |
| 02/24/06 | 743 | Fourth MOTION to Modify *Fourth Joint Motion of the United States and Richard A. Causey to Modify the Court's Post-Indictment Restraining Order* by Richard A Causey as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Stennes, Matthew) (Entered: 02/24/2006) |
| 02/27/06 | 746 | MOTION to Preclude Testimony by David Delainey on Matters Outside the Scope of the Revised Amended Indictment and Second Revised Statement in Compliance by Jeffrey K Skilling, Kenneth L Lay, filed. (jmarchand, ) (Entered: 02/27/2006) |
| 02/27/06 | 747 | Minute Entry for proceedings held before Judge Sim Lake :16th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 2/27/2006. Adjourned until 2/28/2006 at 8:30 A.M. Appearances: Sean Berkowitz, |

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| | | Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 02/28/2006) |
| 02/28/06 | 749 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 16 held on 2/27/06 before Judge Sim Lake. Court Reporter: Cheryll Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 7/18/2006 (mgoolsby, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/21/2006 (akennedy, ). Additional attachment(s) added on 7/21/2006 (akennedy, ). Additional attachment(s) added on 6/4/2007 (pclark, ). Additional |

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| | | attachment(s) added on 6/4/2007 (pclark, ). Additional attachment(s) added on 6/5/2007 (hler, ). Additional attachment(s) added on 6/5/2007 (hler, ). (Entered: 02/28/2006) |
| 02/28/06 | 750 | Defendants are Entitled to Impeach Declarants Whose Out-of-Court Statements are Introduced Under Federal Rule of Evidence 801(d)(2)(E), filed.(ledwards, ) (Entered: 02/28/2006) |
| 02/28/06 | 752 | Minute Entry for proceedings held before Judge Sim Lake :17th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 2/28/2006. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Reid H Weingarten, Ronald Gene Woods.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 03/01/2006) |
| 03/01/06 | 751 | REPLY To "Defendants are Entitled To Impeach Declarants Whose Out-OfCourt Statements are Introduced Under Federal Rule of Evidence 801(d)(2) (E)" by |

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| | | USA as to Jeffrey K Skilling & Kenneth Lay, filed.(mkallie, ) Additional attachment(s) added on 3/1/2006 (mkallie, ). (Entered: 03/01/2006) |
| 03/01/06 | 753 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 17 held on 2/28/06 before Judge Sim Lake. Court Reporter: Cheryll Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). (Entered: 03/01/2006) |

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| 03/01/06 | 755 | Minute Entry for proceedings held before Judge Sim Lake :18th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 3/1/2006. Adjourned until 3/2/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 03/02/2006) |
| 03/02/06 | 754 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 18 held on 3/1/06 before Judge Sim Lake. Court Reporter: Cheryll Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). (Entered: 03/02/2006) |
| 03/02/06 | 757 | Minute Entry for proceedings held before Judge Sim Lake :19th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 3/2/2006. Adjourned until 3/6/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, |

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| | | Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 03/03/2006) |
| 03/03/06 | 756 | TRANSCRIPT filed in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay Jury Trial Volume 19 held on March 2, 2006 before Judge Sim Lake. Court Reporter: Cher Baron , filed. (bgoolsby, ) (Entered: 03/03/2006) |
| 03/06/06 | 758 | MOTION to Preclude Testimony By Andrew Fastow on Matters Outside The Scope Of The Revised Superseding Indictment and Second Revised Statement In Compliance by Jeffrey K Skilling, Kenneth L Lay, filed. (mkallie, ) (Entered: 03/06/2006) |
| 03/06/06 | 762 | Minute Entry for proceedings held before Judge Sim Lake :20th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 3/6/2006. Adjourned until 3/7/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene |

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| | | Woods.(Court Reporter: J. Sanchez/ C. Barron) , filed.(hcarr, ) (Entered: 03/07/2006) |
| 03/07/06 | 759 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 20 held on 3/6/06 before Judge Sim Lake. Court Reporter: Johnny Sanchez/Cheryll Barron, filed. (cpeebles) Additional attachment(s) added on 7/18/2006 (jcraig, ). (Entered: 03/07/2006) |
| 03/07/06 | 760 | OPPOSITION to Motion to Preclude Testimony By Andrew Fastow On Matters Outside The Scope Of The Revised Superseding Indictment and Second Revised Statement In Compliance by USA as to Jeffrey K Skilling, Kenneth L Lay re 758 MOTION , filed.(mkallie, ) (Entered: 03/07/2006) |
| 03/07/06 | 761 | SEALED TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; sealed portion of volume 20 held on 3/6/06 before Judge Sim Lake. Court Reporter: Johnny Sanchez, filed. (cpeebles) (Entered: 03/07/2006) |
| 03/07/06 | 763 | MOTION To Bar Cross-Examination of Andrew Fastow Concerning Judge Hittner's |

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| | | Comments at Lea Fastow's Sentencing by USA as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Exhibit A# 2 Exhibit B) (ghassan, ) (Entered: 03/07/2006) |
| 03/07/06 | 766 | Minute Entry for proceedings held before Judge Sim Lake :21st DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 3/7/2006. Adjourned until 3/8/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez/ C. Barron) , filed.(hcarr, ) (Entered: 03/08/2006) |
| 03/08/06 | 764 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 21 held on 3/7/06 before Judge Sim Lake. Court Reporter: Johnny Sanchez/Cheryll Barron, filed. (cpeebles) Additional attachment(s) added on 7/18/2006 (jcraig, ). (Entered: 03/08/2006) |
| 03/08/06 | 765 | Sealed Document as to Jeffrey K Skilling, Kenneth L Lay, filed. (Bar Code 4:06CI0152)(jmarchand, ) |

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| | | (Entered: 03/08/2006) |
| 03/08/06 | 768 | Minute Entry for proceedings held before Judge Sim Lake :22nd DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 3/8/2006. Adjourned until 3/9/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez/ C. Barron) , filed.(hcarr, ) (Entered: 03/09/2006) |
| 03/09/06 | 767 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 22 held on 3/8/06 before Judge Sim Lake. Court Reporter: Johnny Sanchez/Cherryll Barron, filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added |

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| | | on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). (Entered: 03/09/2006) |
| 03/09/06 | 769 | SEALED MOTION by Kenneth L Lay as to Jeffrey K Skilling, Kenneth L Lay, filed. (Bar Code 4:06CI0219) (jmarchand, ) (Entered: 03/10/2006) |
| 03/09/06 | 770 | SEALED ORDER granting 769 Sealed Motion as to Jeffrey K Skilling (2), Kenneth L Lay (3).(Signed by Judge Sim Lake.) Parties notified. (Bar Code 4:06CI0219)(jmarchand, ) (Entered: 03/10/2006) |
| 03/09/06 | 771 | SEALED MOTION by Kenneth L Lay as to Jeffrey K Skilling, Kenneth L Lay, filed. (Bar Code 4:06CI0220) (jmarchand, ) (Entered: 03/10/2006) |
| 03/09/06 | 772 | SEALED ORDER granting 771 Sealed Motion as to Jeffrey K Skilling (2), Kenneth L Lay (3).(Signed by Judge Sim Lake.) Parties notified. (Bar Code |

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| | | 4:06CI0220)(jmarchand, ) (Entered: 03/10/2006) |
| 03/09/06 | 773 | SEALED MOTION with Proposed Order by Kenneth L Lay as to Jeffrey K Skilling, Kenneth L Lay, filed. (Bar Code 4:06CI0226) (jmarchand, ) (Entered: 03/10/2006) |
| 03/09/06 | 775 | Minute Entry for proceedings held before Judge Sim Lake : 23rd DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 3/9/2006. Adjourned until 3/13/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez/ C. Barron) , filed.(hcarr, ) (Entered: 03/10/2006) |
| 03/10/06 | 774 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 23 held on 3/9/06 before Judge Sim Lake. Court Reporter: Johnny Sanchez/Cheryll Barron, filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 |

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| | | (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). Additional attachment(s) added on 7/19/2006 (aikeakor, ). (Entered: 03/10/2006) |
| 03/13/06 | 778 | Minute Entry for proceedings held before Judge Sim Lake : 24th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 3/13/2006. Adjourned until 3/14/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: G. Dye/ J. Sanchez) , filed.(hcarr, ) (Entered: 03/14/2006) |
| 03/13/06 | 779 | SEALED MOTION by Jeffrey K Skilling, Kenneth L Lay, filed. BAR CODER 4:06C10267 (ncavazos, ) |

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| | | (Entered: 03/14/2006) |
| 03/13/06 | 780 | MOTION to Quash Subpoena Duces Tecum by Sherron S Watkins as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order) (bdaniel, ) (Entered: 03/14/2006) |
| 03/14/06 | 777 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay, jury trial - volume 24 - held on 3/13/2006, before Judge Sim Lake. Court Reporter: G. Dye/J. Sanchez , filed. (dclark, ) Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 03/14/2006) |
| 03/14/06 | 781 | RESPONSE in Opposition by Kenneth L Lay as to Jeffrey K Skilling, Kenneth L Lay re 780 Sherron Watkin's MOTION to Quash , filed. (bdaniel, ) (Entered: 03/14/2006) |
| 03/14/06 | 782 | Minute Entry for proceedings held before Judge Sim Lake : 25th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 3/14/2006. Adjourned until 3/15/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald |

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| | | Gene Woods.(Court Reporter: G. Dye/ J. Sanchez) , filed.(hcarr, ) (Entered: 03/15/2006) |
| 03/14/06 | 786 | Sealed Document as to Jeffrey K Skilling, Kenneth L Lay, filed. BAR CODE 4:06CI0279(ncavazos, ) (Entered: 03/16/2006) |
| 03/14/06 | 787 | Sealed Document as to Jeffrey K Skilling, Kenneth L Lay, filed. BAR CODE 4:06CI0280(ncavazos, ) (Entered: 03/16/2006) |
| 03/15/06 | 783 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay,jury trial -volume 25 - held on 3/14/2006, before Judge Sim Lake. Court Reporter: G. Dye/J. Sanchez , filed. (dclark, ) Additional attachment(s) added on 9/13/2006 (jcraig, ). Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 03/15/2006) |
| 03/15/06 | 784 | Minute Entry for proceedings held before Judge Sim Lake :26th DAY OF<br>JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 3/15/2006. Govt presents evidence Appearances:J. Hueston, C. Strikland, M. Kline, A. Sayle, B. Collins, M. Secrest, L. Vittor, Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall |

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| | | Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez, G. Dye, C. Barron) , filed.(dhansen) (Entered: 03/16/2006) |
| 03/16/06 | 785 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay, jury trial - volume 26 - held on 3/15/2006, before Judge Sim Lake. Court Reporter: G. Dye/J. Sanchez , filed. (dclark, ) Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 03/16/2006) |
| 03/17/06 | 788 | MOTION to Compel Production of Brady Materials Related to Kevin Hannon's "They're On To Us" Testimony, by Jeffrey K Skilling as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order) (psmith, ) (Entered: 03/20/2006) |
| 03/20/06 | 790 | ORDER that Ben F. Glissan, Jr. give testimony as to all matters about which he may be interrogated in this proceeding as to Jeffrey K Skilling, Kenneth L Lay. No information derived from such testimony may be used against Glisan in any criminal case, except in a prosecution for |

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| | | perjury, giving a false statement, or otherwise failing to comply with this order. This order shall become effective only if after the execution of this order, Ben F. Glisan, Jr. refuses to testify or provide other information on the basis of his privilege against self-incrimination.( Signed by Judge Sim Lake ) Parties notified. (djustice, ) (Entered: 03/20/2006) |
| 03/20/06 | 793 | Minute Entry for proceedings held before Judge Sim Lake :27th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 3/20/2006. Adjourned until 3/21/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 03/21/2006) |
| 03/20/06 | 794 | SEALED MOTION by Jeffrey K Skilling, Kenneth L Lay, filed. BAR CODE 4:06CI0252 (ncavazos, ) (Entered: 03/21/2006) |
| 03/20/06 | 795 | SEALED MOTION by Jeffrey K Skilling, Kenneth L Lay, filed. BAR CODE 4:06CI0253 (ncavazos, ) |

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| | | (Entered: 03/21/2006) |
| 03/20/06 | 797 | Application For Immunity Order; by USA as to case of Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(mkadlubowski, ) (Entered: 03/21/2006) |
| 03/21/06 | 791 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 27 held on 3/20/06 before Judge Sim Lake. Court Reporter: Cheryll Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (mgoolsby, ). (Entered: 03/21/2006) |
| 03/21/06 | 792 | SEALED TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; proceedings held in chambers on 3/20/06 before Judge Sim Lake. Court Reporter: Gayle Dye, filed. (cpeebles) (Entered: 03/21/2006) |
| 03/21/06 | 796 | ORDER Bureau of Prisons is Ordered to deliver all responsive documents and objects to Ms. Katheryn Ruemmler. The materials will be delivered to the Court for review. The Court will enter a protective order if it determines the defendants are entitled to view the materials.( |

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| | | Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 03/21/2006) |
| 03/21/06 | 800 | Minute Entry for proceedings held before Judge Sim Lake :28th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 3/21/2006. Adjourned until 3/22/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 03/22/2006) |
| 03/21/06 | 802 | MAIL RETURNED UNDELIVERABLE sent to Chip B Lewis, Michael Wayne Ramsey as to Jeffrey K Skilling, Kenneth L Lay , filed. (ncavazos, ) (Entered: 03/22/2006) |
| 03/22/06 | 798 | SEALED TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; proceedings in chambers held on 3/21/06 before Judge Sim Lake. Court Reporter: Gayle Dye, filed. (cpeebles) (Entered: 03/22/2006) |
| 03/22/06 | 799 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L |

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| | | Lay; jury trial - volume 28 held on 3/21/06 before Judge Sim Lake. Court Reporter: Cheryll Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (mgoolsby, ). (Entered: 03/22/2006) |
| 03/22/06 | 801 | SEALED TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; bench conference held on 3/21/06 before Judge Sim Lake. Court Reporter: Cheryll Barron, filed. (cpeebles) (Entered: 03/22/2006) |
| 03/22/06 | 803 | Minute Entry for proceedings held before Judge Sim Lake :29th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 3/22/2006. Adjourned until 3/23/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Bruce Hiler, Mark Holscher, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 03/23/2006) |
| 03/23/06 | 804 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 29 held on 3/22/06 before Judge Sim Lake. |

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| | | Court Reporter: Cheryll Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 7/20/2006 (mgoolsby, ). (Entered: 03/23/2006) |
| 03/23/06 | 805 | Minute Entry for proceedings held before Judge Sim Lake :30th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 3/23/2006. Adjourned until 3/27/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 03/24/2006) |
| 03/24/06 | 826 | RESPONSE to Motion by USA as to Jeffrey K Skilling, Kenneth L Lay re 788 MOTION to Compel, filed. (4:06CI0453)(kmurphy, ) (Entered: 03/30/2006) |
| 03/24/06 | 850 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 30 held on 3/23/06 before Judge Sim Lake. Court Reporter: Cheryll Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 7/20/2006 (mgoolsby, ). (Entered: |

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| 03/27/06 | 806 | MOTION for Meaningful Defense Witness List by USA as to Jeffrey K Skilling, Kenneth L Lay, filed. (mkadlubowski, ) (Entered: 03/27/2006) |
| 03/27/06 | 807 | ORDER to increase juror attendance fee. ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 03/27/2006) |
| 03/27/06 | 810 | SEALED MOTION by Kenneth L Lay as to Jeffrey K Skilling, Kenneth L Lay, filed. BAR CODE 4:06CI0435(ncavazos, ) (Entered: 03/28/2006) |
| 03/27/06 | 819 | Minute Entry for proceedings held before Judge Sim Lake :31st DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 3/27/2006. Adjourned until 3/28/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez/ C. Barron) , filed.(hcarr, ) (Entered: 03/28/2006) |
| 03/27/06 | 827 | Sealed Document as to Jeffrey K Skilling, Kenneth L Lay, filed. |

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| | | (4:06CI0499)(kmurphy, ) (Entered: 03/30/2006) |
| 03/28/06 | 809 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 31 held on 3/27/06 before Judge Sim Lake. Court Reporter: Johnny Sanchez/Cheryll Barron, filed. (cpeebles) Additional attachment(s) added on 7/18/2006 (mgoolsby, ). (Entered: 03/28/2006) |
| 03/28/06 | 813 | MOTION for Judgment of Acquittal by Jeffrey K Skilling, filed. (Attachments: # 1 Exhibit A# 2 Proposed Order)(jbradford, ) (Entered: 03/28/2006) |
| 03/28/06 | 814 | Stipulation by Jeffrey K Skilling, Kenneth L Lay, filed.(jbradford, ) (Entered: 03/28/2006) |
| 03/28/06 | 815 | MOTION for Disclosure of exculpatory source for witness Ken Rice by Jeffrey K Skilling, filed. (Attachments: # 1 Exhibits A & B, # 2 Proposed Order)(ddarneille, ) (Entered: 03/28/2006) |
| 03/28/06 | 816 | Stipulation by Jeffrey K Skilling, filed.(jbradford, ) (Entered: 03/28/2006) |
| 03/28/06 | 817 | Stipulation by Jeffrey K Skilling, USA as to Jeffrey K Skilling for the period between 3/1/00 and 8/14/01, |

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| | | filed.(sguevara, ) (Entered: 03/28/2006) |
| 03/28/06 | 818 | Stipulation (re: testimony of Dortha Gray) by Jeffrey K Skilling, Kenneth L Lay, USA as to Jeffrey K Skilling, Kenneth L Lay, filed.(ddarneille, ) (Entered: 03/28/2006) |
| 03/28/06 | 820 | Minute Entry for proceedings held before Judge Sim Lake :32nd DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 3/28/2006. Government rests. Granting Government's Motion to Dismiss counts 15, 21, 30, and 33. Granting Defendants' oral Motions to Dismiss counts 15, 21, 30, and 33. Denying Defendants' Motions for Aquittal. Granting Governemnt's Motion in Limini on abondoned courts. Defendants to identify their first witness to the Government on 3/28/2006 by 4:00 p.m. and will identify their next 4 witnesses on 3/29/2006 by noon. Defendants shall provide a revised witness list to the Government by 5:00 on Friday, 3/31/2006. Adjourned until 4/3/2006 at 3:00 p.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall |

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| | | Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez) , filed.(hcarr, ) (Entered: 03/28/2006) |
| 03/28/06 | 821 | MOTION to Dismiss Count(s) by USA as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(ejuarez, ) (Entered: 03/28/2006) |
| 03/28/06 | 823 | MOTION to Compel Production of Jencks Act and Rule 26.2 Materialby USA, filed. (hlerma, ) (Entered: 03/29/2006) |
| 03/28/06 | 824 | MOTION to Admit Evidence that Deft Lay Failed to Repay Line of Credit by USA, filed. (hlerma, ) (Entered: 03/29/2006) |
| 03/28/06 | 829 | ORDER granting 821 Motion to Dismiss Counts Jeffrey K Skilling (2) Count 15s,21s,33s and Kenneth L Lay (3) Count 30 Dismissed as to Jeffrey K Skilling (2), Kenneth L Lay (3).(Signed by Judge Sim Lake.) Parties notified.(jbradford, ) (Entered: 03/31/2006) |
| 03/29/06 | 822 | TRANSCRIPT filed in case as to |

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| | | Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 32 held on 3/28/06 before Judge Sim Lake. Court Reporter: Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 03/29/2006) |
| 03/29/06 | 825 | RESPONSE in Opposition by Jeffrey K Skilling re 823 MOTION to Compel , filed.(ejuarez, ) (Entered: 03/29/2006) |
| 03/30/06 | 828 | ORDER denying 788 Motion to Compel as to Jeffrey K Skilling (2), Kenneth L Lay (3).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 03/30/2006) |
| 03/31/06 | 830 | Supplemental Expert Disclosure for Walter K. Rush, III by Jeffrey K Skilling , filed.(mkallie, ) (Entered: 03/31/2006) |
| 03/31/06 | 831 | Supplemental Expert Disclosure For Michael Mulligan by Jeffrey K Skilling , filed.(mkallie, ) (Entered: 03/31/2006) |
| 03/31/06 | 833 | Proposed Jury Instructions as to Jeffrey K Skilling, Kenneth L Lay, filed. (ledwards, ) (Entered: 04/03/2006) |
| 03/31/06 | 834 | Proposed Jury Instructions as to |

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| | | Jeffrey K Skilling, Kenneth L Lay, by USA, filed. (Attachments: # 1 Document Part 2 of 3# 2 Part 3 of 3 of Proposed Jury Instructions)(ncavazos, ) Text Modified on 5/3/2006 (ghassan, ). (Entered: 04/03/2006) |
| 03/31/06 | 840 | SEALED MOTION with Proposed Order by Jeffrey K Skilling, Kenneth L Lay, filed. (Bar Code 4:06CI0481) (jmarchand, ) (Entered: 04/04/2006) |
| 04/03/06 | 835 | MOTION for Adequate Disclosure, MOTION Enforcement of the Court's Expert Disclosure Order re 639 Memorandum Opinion by USA as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Proposed Order)(jbradford, ) (Entered: 04/03/2006) |
| 04/03/06 | 836 | MOTION to Quash Subpoena Served by Defendants Skilling and Lay on Arthur Andersen LLP by Arthur Anderson LLP as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Hummer, Rosslyn) (Entered: 04/03/2006) |

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| 04/03/06 | 837 | NOTICE of Motion to Quash Subpoena by Arthur Anderson LLP as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 836 MOTION to Quash, filed.(Hummer, Rosslyn) (Entered: 04/03/2006) |
| 04/03/06 | 838 | AFFIDAVIT in Support by Arthur Anderson LLP as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 836 MOTION to Quash, filed. (Attachments: # 1 Exhibit A through I)(Hummer, Rosslyn) (Entered: 04/03/2006) |
| 04/03/06 | 839 | Minute Entry for proceedings held before Judge Sim Lake :33rd DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 4/3/2006. Adjourned until 4/4/2006 at 8:30 a.m. Appearances: Bruce Hiler, Mark Holscher, Chip B Lewis, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez/ G. Dye) , filed.(hcarr, ) (Entered: 04/04/2006) |
| 04/03/06 | 842 | BRIEF in Support by USA as to Jeffrey K Skilling, Kenneth L Lay re 834 Proposed Jury Instructions , filed.(ledwards, ) (Entered: 04/04/2006) |
| 04/03/06 | 844 | MOTION Preclude Misleading |

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| | | Use of Indictment in Questioning Defendants by USA as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Exhibit A-C# 2 Exhibit D# 3 Exhibit D Continued) (jbradford, ) (Entered: 04/05/2006) |
| 04/03/06 | 848 | MEMORANDUM of Law in Support by Jeffrey K Skilling, Kenneth L Lay re 833 Jury Instructions , filed. (Attachments: # 1 Exhibit to Memo Letter A# 2 Exhibit to Memo Letter A continued# 3 Exhibit to Memo Letter B, Tabs 1 thru 4# 4 Exhibit to Memo Letter B continued, Tabs 4 thru 10# 5 Exhibit to Memo Letter B continued Tabs 11 thru 17)(ncavazos, ) Additional attachment(s) added on 4/6/2006 (ncavazos, ). Additional attachment(s) added on 4/6/2006 (ncavazos, ). Additional attachment(s) added on 4/6/2006 (ncavazos, ). (Entered: 04/06/2006) |
| 04/03/06 | 849 | RESPONSE to Defts MOTION to Introduce Prior Testimony of Unavailable Witnesses Pursuant to Federal Rules of Evidence 804(b)(1) or 807, by USA as to Jeffrey K Skilling, Kenneth L Lay , filed. (Attachments: # 1 Continuation 2 of 2)(psmith, ) |

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| | | (Entered: 04/06/2006) |
| 04/04/06 | 841 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 33 held on 4/3/06 before Judge Sim Lake. Court Reporter: Gayle Dye/Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 04/04/2006) |
| 04/04/06 | 845 | Minute Entry for proceedings held before Judge Sim Lake :34th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 4/4/2006. Adjourned until 4/5/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: G. Dye/ J. Sanchez) , filed.(hcarr, ) (Entered: 04/05/2006) |
| 04/05/06 | 843 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 34 held on 4/4/06 before Judge Sim Lake. Court Reporter: Gayle Dye/Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 04/05/2006) |

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| 04/05/06 | 847 | Minute Entry for proceedings held before Judge Sim Lake :35th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 4/5/2006. Adjourned until 4/6/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: G. Dye/ J. Sanchez) , filed.(hcarr, ) (Entered: 04/06/2006) |
| 04/06/06 | 846 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 35 held on 4/5/06 before Judge Sim Lake. Court Reporter: Gayle Dye/Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 04/06/2006) |
| 04/06/06 | 851 | JOINT OPPOSITION by Jeffrey K Skilling, Kenneth L Lay to Arthur Andersen's 836 MOTION to Quash Subpoena,, filed. (Attachments: # 1 Continuation 1 of 2# 2 Exhibit 2 of 2)(psmith, ) (Entered: 04/06/2006) |
| 04/06/06 | 853 | Minute Entry for proceedings held before Judge Sim Lake :36th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on |

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| | | 4/6/2006. Final briefing on the Arthur Anderson subpoena will be filed on 4/10/06. The Government will ask Mr. Rice's attorney to appear on Monday. Adjourned until 4/10/2006 at 8:30 a.m. Appearances: Sean Berkowitz, B Collins, Mark Holscher, J Hueston, Chip B Lewis, M Kline, M Randall Oppenheimer, Daniel M Petrocelli, M Ramsey, Kathryn H Ruemmler, A Sayle, M Secrest, C Strickland, L Vittor, Ronald Gene Woods.(Court Reporter: G. Dye/ J. Sanchez/C Barron), filed. (kmurphy, ) (Entered: 04/07/2006) |
| 04/07/06 | 852 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 36 held on 4/6/06 before Judge Sim Lake. Court Reporter: Gayle Dye/Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 9/14/2006 (jcraig, ). (Entered: 04/07/2006) |
| 04/07/06 | 856 | OBJECTIONS Concerning The Scope of Testimony From Walter K Rush and Michael Mulligan by USA as to Jeffrey K Skilling, Kenneth L Lay , filed.(mkadlubowski, ) (Entered: 04/10/2006) |

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| 04/10/06 | 855 | RESPONSE in Support by Arthur Anderson LLP as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re 836 MOTION to Quash *Subpoena*, filed.(Hummer, Rosslyn) (Entered: 04/10/2006) |
| 04/10/06 | 858 | Minute Entry for proceedings held before Judge Sim Lake :37th DAY OF<br>JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 4/10/2006. Adjourned until 4/11/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 04/11/2006) |
| 04/10/06 | 859 | MOTION For Admission of Schuler and Zisman Memoranda by USA as to Jeffrey K Skilling, Kenneth L Lay, filed. (mkadlubowski, ) (Entered: 04/11/2006) |
| 04/10/06 | 860 | RESPONSE to Motion by USA as to Jeffrey K Skilling, Kenneth L Lay re 815 MOTION for Disclosure , filed.(hlerma, ) (Entered: 04/11/2006) |
| 04/10/06 | 861 | Supplemental Expert Disclosure by |

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| | | Kenneth L Lay, filed.(hlerma, ) (Entered: 04/11/2006) |
| 04/10/06 | 862 | BRIEF In Support of #836 by USA as to Jeffrey K Skilling, Kenneth L Lay re 836 Arthur Anderson MOTION to Quash , filed.(mkadlubowski, ) (Entered: 04/11/2006) |
| 04/10/06 | 865 | Reply in Support of Defendants' Motion to Introduce Prior Testimony of Unavailable Witnessesby Jeffrey K Skilling, Kenneth L Lay , filed. (mmarch, ) (Entered: 04/12/2006) |
| 04/10/06 | 866 | RESPONSE to Motion by Ken Rice re 815 MOTION for the Disclosure of Exculpatory Source. , filed.(ejuarez, ) Modified on 4/25/2006 (ejuarez, ). (Entered: 04/12/2006) |
| 04/10/06 | 867 | RESPONSE in Support by Arthur Anderson LLP as to Jeffrey K Skilling, Kenneth L Lay re 836 MOTION to Quash Subpoena , filed.(ejuarez, ) (Entered: 04/12/2006) |
| 04/11/06 | 857 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 37 held on 4/10/06 before Judge Sim Lake. Court Reporter: Cheryll |

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| | | Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 04/11/2006) |
| 04/11/06 | 864 | Minute Entry for proceedings held before Judge Sim Lake :38th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 4/11/2006. Appearances:J. Hueston, C. Strikland, M. Kline, A. Sayle, B. Collins, M. Secrest, L. Vittor,. Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez, G. Dye, C. Barron) , filed. (dhansen, ) (Entered: 04/12/2006) |
| 04/12/06 | 863 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 38 held on 4/11/06 before Judge Sim Lake. Court Reporter: Cheryll Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 04/12/2006) |
| 04/12/06 | 869 | Kenneth L. Lay's Disclosure of Summary Restimony, filed.(mharrison, ) (Entered: 04/13/2006) |

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| 04/12/06 | 870 | Minute Entry for proceedings held before Judge Sim Lake :39th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 4/12/2006. Adjourned until 4/13/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 04/13/2006) |
| 04/13/06 | 868 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 39 held on 4/12/06 before Judge Sim Lake. Court Reporter: Cheryll Barron/Gayle Dye. filed. (cpeebles) Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 04/13/2006) |
| 04/13/06 | 871 | MEMORANDUM OPINION AND ORDER Granting 836 Arthur Andersen, LLP's Motion to Quash Subpoena as to Jeffrey K Skilling, Kenneth L Lay ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 04/13/2006) |
| 04/13/06 | 872 | Minute Entry for proceedings held before Judge Sim Lake :40th DAY |

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| | | OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 4/13/2006. Adjourned until 4/17/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 04/14/2006) |
| 04/14/06 | 873 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 40 held on 4/13/06 before Judge Sim Lake. Court Reporter: Cheryll Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 04/14/2006) |
| 04/14/06 | 874 | MOTION to Limit or Exclude the Testimony of Floyd Kearns by USA as to Jeffrey K Skilling, Kenneth L Lay, filed. (jbradford, ) (Entered: 04/14/2006) |
| 04/14/06 | 875 | OBJECTIONS Concerning Expert Testimony of Jerry L. Arnod and Christopher B. Barry by USA as to Jeffrey K Skilling, Kenneth L Lay , filed.(jmarchand, ) (Entered: |

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| | | 04/14/2006) |
| 04/14/06 | 879 | SEALED MOTION by Jeffrey K Skilling, filed. (4:06CI0702) (jbradford, ) (Entered: 04/18/2006) |
| 04/17/06 | 876 | RESPONSE to Objections concerning Expert Testimony by Jeffrey K Skilling , filed.(kejones, ) (Entered: 04/17/2006) |
| 04/17/06 | 877 | Sealed Document as to Jeffrey K Skilling, filed. (4:06CI0698)(jbradford, ) (Entered: 04/18/2006) |
| 04/17/06 | 878 | Minute Entry for proceedings held before Judge Sim Lake :41st DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 4/17/2006. Adjourned until 4/18/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez/ C. Barron) , filed.(hcarr, ) (Entered: 04/18/2006) |
| 04/17/06 | 880 | OBJECTIONS TO SUMMARY TESTIMONY BY BEAU HERROLD by USA , filed.(sguevara, ) (Entered: 04/18/2006) |

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| 04/18/06 | 881 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 41 held on 4/17/06 before Judge Sim Lake. Court Reporter: Johnny Sanchez/Cheryll Barron, filed. (cpeebles) Additional attachment(s) added on 7/18/2006 (jcraig, ). (Entered: 04/18/2006) |
| 04/18/06 | 882 | PROPOSED ORDER Regarding the Inspection of Ken Rice's Computer as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(jmarchand, ) (Entered: 04/18/2006) |
| 04/18/06 | 883 | Minute Entry for proceedings held before Judge Sim Lake :42nd DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 4/18/2006. Adjourned until 4/19/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez/ C. Barron) , filed.(hcarr, ) (Entered: 04/19/2006) |
| 04/19/06 | 884 | ORDER granting in part and denying in part 815 Motion for Disclosure of Exculpatory Source |

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| | | for Witness Rice as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 04/19/2006) |
| 04/19/06 | 885 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 42 held on 4/18/06 before Judge Sim Lake. Court Reporter: Johnny Sanchez/Cheryll Barron, filed. (cpeebles) Additional attachment(s) added on 7/18/2006 (jcraig, ). (Entered: 04/19/2006) |
| 04/19/06 | 887 | Minute Entry for proceedings held before Judge Sim Lake :43rd DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 4/19/2006. Adjourned until 4/20/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez / C. Barron) , filed.(hcarr, ) (Entered: 04/20/2006) |
| 04/20/06 | 886 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 43 held on 4/19/06 before Judge Sim Lake. Court Reporter: Johnny |

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| | | Sanchez/Cheryll Barron, filed. (cpeebles) Additional attachment(s) added on 7/18/2006 (mgoolsby, ). (Entered: 04/20/2006) |
| 04/20/06 | 888 | MOTION to Preclude Questioning Concerning Jo-Ellan Dimitrius by USA as to Jeffrey K Skilling, Kenneth L Lay, filed. (sguevara, ) (Entered: 04/20/2006) |
| 04/20/06 | 889 | Minute Entry for proceedings held before Judge Sim Lake :44th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 4/20/2006. Testimony taken. Trial continued to April 24, 2006 at 8:30 a.m. Appearances: Sean Berkowitz, K. Ruemmler, J. Hueston, C. Strikland Mark Holscher, Chip B Lewis, B. Collins, M. Secrest M Randall Oppenheimer, M. Kline, Daniel M Petrocelli, Michael Wayne Ramsey, L. Vittor, Ronald Gene Woods.(Court Reporter: Sanchez/Dye/Barron) Deft continued on bond, filed.(ealexander, ) (Entered: 04/21/2006) |
| 04/21/06 | 890 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay - jury trial - volume 44 - held on 4/20/2006, before Judge Sim Lake. |

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| | | Court Reporter: J.Sanchez/C. Barron , filed. (dclark, ) Additional attachment(s) added on 7/18/2006 (jcraig, ). (Entered: 04/21/2006) |
| 04/21/06 | 891 | Supplemental Expert Disclosure for Gregg A. Jarrell by Jeffrey K Skilling as to Jeffrey K Skilling, Kenneth L Lay , filed. (Attachments: # 1 Exhibit 1; # 2 Exhibit 2; # 3 Exhibit 3; # 4 Exhibit 4; # 5 Exhibit 5; # 6 Exhibit 6; # 7 Exhibit 7)(jmarchand, ) (Entered: 04/21/2006) |
| 04/21/06 | 892 | Supplemental Expert Disclosure for Daniel R. Fischel by Jeffrey K Skilling , filed.(jbradford, ) (Entered: 04/24/2006) |
| 04/24/06 | 894 | Minute Entry for proceedings held before Judge Sim Lake :45th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 4/24/2006. Adjourned until 4/25/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: G. Dye/ J. Sanchez) , filed.(hcarr, ) (Entered: 04/25/2006) |
| 04/25/06 | 893 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 45 held on |

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| | | 4/24/06 before Judge Sim Lake. Court Reporter: Gayle Dye/Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 9/14/2006 (jcraig, ). (Entered: 04/25/2006) |
| 04/25/06 | 896 | Supplemental Expert Disclosure for Dr. Robert MacKay by Jeffrey K Skilling , filed.(ledwards, ) (Entered: 04/26/2006) |
| 04/25/06 | 897 | Minute Entry for proceedings held before Judge Sim Lake :46th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 4/25/2006. Adjourned until 4/26/2006 at 8:30 a.m. Appearances: Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: G. Dye/ J. Sanchez) , filed.(hcarr, ) (Entered: 04/26/2006) |
| 04/26/06 | 895 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 46 held on 4/25/06 before Judge Sim Lake. Court Reporter: Gayle Dye/Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: |

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| | | 04/26/2006) |
| 04/26/06 | 898 | SEALED MOTION by Jeffrey K Skilling, filed. (4:06CI0847) (mcwilliams, ) (Entered: 04/27/2006) |
| 04/26/06 | 900 | MOTION leave to cross-examinde Deft Lay concerning Valhalla by USA, filed. (Attachments: # 1 Exhibit B)(hlerma, ) (Entered: 04/27/2006) |
| 04/26/06 | 904 | Minute Entry for proceedings held before Judge Sim Lake :47th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 4/26/2006. Adjourned until 4/27/2006 at 8:00 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: G. Dye/ J. Sanchez) , filed.(hcarr, ) (Entered: 04/27/2006) |
| 04/27/06 | 899 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 47 held on 4/26/06 before Judge Sim Lake. Court Reporter: Gayle Dye/Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 9/14/2006 (jcraig, ). (Entered: |

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| | | 04/27/2006) |
| 04/27/06 | 901 | MEMORANDUM OPINION AND ORDER Granting in Part and Denying in Part 840 Motion to Introduce Prior Testimony of Unavailable Witnesses Pursuant to Federal Rules of Evidence 804(b)(1) or 807 as to Jeffrey K Skilling, Kenneth L Lay ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 04/27/2006) |
| 04/27/06 | 903 | MOTION to Strike Testimony and Evidence Concerning Photofete and Jennifer Binder by Jeffrey K Skilling, filed. (mewilliams, ) (Entered: 04/27/2006) |
| 04/27/06 | 905 | Minute Entry for proceedings held before Judge Sim Lake :48th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 4/27/2006. Adjourned until 8:00 a.m., Monday, May 1, 2006. Appearances:M. Secrest, J. Hueston, C. Strickland, M. Kline, A. Sayle, B. Collins, L Vittor,. Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: Sanchez, Dye, Barron) , |

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| | | filed.(dhansen, ) (Entered: 04/27/2006) |
| 04/27/06 | 906 | OBJECTION CONCERING EXPERT TESTIMONY OF Gregg A. Jarrel. by USA as to Jeffrey K Skilling, Kenneth L Lay , filed.(ejuarez, ) (Entered: 04/27/2006) |
| 04/27/06 | 907 | OBJECTIONS CONCERNING EXPERT TESTIMONY OF DANIEL R. FISCHEL by USA , filed.(sguevara, ) (Entered: 04/27/2006) |
| 04/28/06 | 908 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 48 held on 4/27/06 before Judge Sim Lake. Court Reporter: Gayle Dye/Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 04/28/2006) |
| 04/28/06 | 910 | OBJECTION concerning expert testimony of Dr. Robert Mackay by USA as to Jeffrey K Skilling, Kenneth L Lay , filed.(kejones, ) (Entered: 04/28/2006) |
| 05/01/06 | 912 | United States' Submission Concerning Reading of Former Testimony as to Jeffrey K Skilling, Kenneth L Lay, filed, USA. |

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| | | (Attachments: # 1 Exhibit A# 2 Continuation # 3 Continuation # 4 Exhibit)(ledwards, ) Modified on 5/1/2006 (ledwards, ). (Entered: 05/01/2006) |
| 05/01/06 | 913 | United States' OBJECTION Concerning Scheduling of Defense Expert Witnesses by USA as to Jeffrey K Skilling, Kenneth L Lay , filed. (ledwards, ) (Entered: 05/01/2006) |
| 05/01/06 | 914 | MOTION for Immediate Disclosure Of Identities and Opinions Of Task Force's Expert Witnesses Or, In The Alternative, To Preclude Expert Testimony by Jeffrey K Skilling, filed. (mkallie, ) Additional attachment(s) added on 5/1/2006 (mkallie, ). (Entered: 05/01/2006) |
| 05/01/06 | 916 | Minute Entry for proceedings held before Judge Sim Lake :49th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 5/1/2006. Adjourned until 5/2/200 at 8:00 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 05/02/2006) |

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| 05/02/06 | 915 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 49 held on 5/1/06 before Judge Sim Lake. Court Reporter: Cheryll Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 7/18/2006 (jcraig, ). Additional attachment(s) added on 7/18/2006 (akennedy, ). (Entered: 05/02/2006) |
| 05/02/06 | 917 | Minute Entry for proceedings held before Judge Sim Lake :50th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 5/2/2006. Demonstrative exhibits to be disclosed the day before they are to be offered. Briefing on jury instrucitons for forfeiture due by 12:00 on 5/4/2006. Defendants briefing on witnesses' asserting 5th amendment privilege due by 12:00, 5/4/2006. Government's response due 12:00, 5/5/2006. Adjourned until 5/3/2006 at 8:00 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 05/03/2006) |

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| 05/02/06 | 918 | Supplemental Memorandum in Opposition to Task Force's Proposed Deliberate "Indifference" Jury Instruction by Jeffrey K Skilling re 834 Proposed Jury Instructions, filed.(ghassan, ) (Entered: 05/03/2006) |
| 05/02/06 | 919 | MOTION to Exclude The Task Force's Rebuttal Experts, Profs. Bernard Black and Nejat Seyhunby Jeffrey K Skilling as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(hlerma, ) (Entered: 05/03/2006) |
| 05/02/06 | 921 | Opposition by USA as to Jeffrey K Skilling, Kenneth L Lay re 903 MOTION to Strike Testimony and Evidence Concerning Photofete and Jennifer Binder , filed. (Attachments: # 1 Excerpts from Transcripts April 17, 19 and 20, 2006)(ledwards, ) (Entered: 05/03/2006) |
| 05/02/06 | 922 | ORDER denying 903 Motion to Strike as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 05/03/2006) |
| 05/03/06 | 920 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 50 held on |

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| | | 5/2/06 before Judge Sim Lake. Court Reporter: Cheryll Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 7/18/2006 (jcraig, ). (Entered: 05/03/2006) |
| 05/03/06 | 923 | RESPONSE in SUpport of Motion to Strike Testimony and Evidence by Kenneth L Lay , filed.(kejones, ) (Entered: 05/03/2006) |
| 05/03/06 | 924 | MOTION to Dismiss Count(s) 43, 45-46, 48-49 by Jeffrey K Skilling as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order) (kejones, ) (Entered: 05/03/2006) |
| 05/03/06 | 925 | RESPONSE to United States' Objections concerning expert testimony of Gregg A. Jarrell by Jeffrey K Skilling as to Jeffrey K Skilling, Kenneth L Lay , filed. (Attachments: # 1 Exhibit A# 2 Exhibit B)(kejones, ) (Entered: 05/03/2006) |
| 05/03/06 | 926 | RESPONSE by Jeffrey K Skilling re 910 Objections concerning expert testimony of Dr. Robert Mackay , filed. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit B continued)(ghassan, ) (Entered: 05/03/2006) |

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| 05/03/06 | 927 | Minute Entry for proceedings held before Judge Sim Lake :51st DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 5/3/2006. Adjourned until 5/4/2006 at 8:00 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 05/04/2006) |
| 05/04/06 | 928 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 51 held on 5/3/06 before Judge Sim Lake. Court Reporter: Cheryll Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 7/18/2006 (jcraig, ). (Entered: 05/04/2006) |
| 05/04/06 | 929 | MOTION Establishing Protocol for Witnesses to Assert Fifth Amendment Privileges by Jeffrey K Skilling, Kenneth L Lay, filed. (ejuarez, ) (Entered: 05/04/2006) |
| 05/04/06 | 930 | MOTION To Limit Testimony By Attorney Glenn West by USA as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D)(ejuarez, ) (Entered: |

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| | | 05/04/2006) |
| 05/04/06 | 931 | Minute Entry for proceedings held before Judge Sim Lake :52nd DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 5/4/2006. Adjourned until 5/8/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, Daniel M Petrocelli, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: C. Barron/ G. Dye) , filed.(hcarr, ) (Entered: 05/05/2006) |
| 05/05/06 | 932 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 52 held on 5/4/06 before Judge Sim Lake. Court Reporter: Cheryll Barron/Gayle Dye, filed. (cpeebles) Additional attachment(s) added on 7/18/2006 (jcraig, ). (Entered: 05/05/2006) |
| 05/05/06 | 933 | Supplemental Proposed Jury Instructions as to Jeffrey K Skilling, Kenneth L Lay, filed. (hlerma, ) Modified on 5/8/2006 (hlerma, ). (Entered: 05/08/2006) |
| 05/05/06 | 934 | RESPONSE to Motion by USA as to Jeffrey K Skilling, Kenneth L Lay re 929 MOTION , filed.(kejones, ) (Entered: |

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| | | 05/08/2006) |
| 05/05/06 | 935 | Minute Entry for proceedings held before Judge Sim Lake :MINUTE ENTRY re: Government's Motion to Compel Demonstrative Exhibits as to Jeffrey K Skilling held on 5/5/2006 Appearances: Sean Berkowitz, Daniel M Petrocelli.(Court Reporter: J. Sanchez) , filed.(hcarr, ) (Entered: 05/08/2006) |
| 05/05/06 | 936 | Summary of Evidence to Support A Deliberate Ignorance Instruction as to Jeffrey K Skilling, filed.(mmarch, ) (Entered: 05/08/2006) |
| 05/05/06 | 937 | MOTION for Production of Expert Demonstratives for Gregg A. Jarrell and Robert Mackay by USA, filed. (mmarch, ) Modified on 5/10/2006 (ckrus, ). (Entered: 05/08/2006) |
| 05/05/06 | 953 | MOTION requesting court-ordered defense withness immunity by Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Part 2 - Exhibits 1 & 2# 2 Part 3 - Exhibits 2 continued and 3# 3 Part 4 - 3 continued# 4 Part 5 of 5 - Exhibits 4 & 5)(ncavazos, ) (Entered: 05/12/2006) |

| Filed | # | Docket Text |
|---|---|---|
| 05/08/06 | 938 | Minute Entry for proceedings held before Judge Sim Lake :53rd DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 5/8/2006. Defense Rests. Defendants' Motion for Acquital is Denied. Defendant's Motions to compel government to grant immunity to unavailable witnesses is Denied. Government Rests. Adjourned until 5/15/2006 at 8:30a.m. Appearances: Sean Berkowitz, Mark Holscher, Chip B Lewis, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: G. Dye) , filed.(hcarr, ) (Entered: 05/08/2006) |
| 05/08/06 | 939 | TRANSCRIPT filed in case as to Jeffrey K Skilling - Motion Hearing held on 5/5/06 before Judge Sim Lake. Court Reporter: J. Sanchez , filed. (cjan, ) Additional attachment(s) added on 9/13/2006 (jcraig, ). (Entered: 05/08/2006) |
| 05/08/06 | 941 | Stipulation by Jeffrey K Skilling, Kenneth L Lay, filed.(hlerma, ) (Entered: 05/09/2006) |
| 05/08/06 | 942 | MOTION to Exclude the testimony of the Task Force's Rebuttal |

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| | | Witnesses by Jeffrey K Skilling, Kenneth L Lay, filed. (ejuarez, ) (Entered: 05/09/2006) |
| 05/08/06 | 943 | REPLY MEMORANDUM in Support by Jeffrey K Skilling to re 918 Supplemental Memorandum in Opposition document # 834 Jury Instruction, filed.(hlerma, ) (Entered: 05/09/2006) |
| 05/09/06 | 940 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 54 held on 5/8/06 before Judge Sim Lake. Court Reporter: Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 7/20/2006 (pjones, ). Additional attachment(s) added on 7/20/2006 (pjones, ). Additional attachment(s) added on 7/20/2006 (pjones, ). (Entered: 05/09/2006) |
| 05/09/06 | 944 | MOTION to Admit Loss Notification Memoranda by USA as to Jeffrey K Skilling, Kenneth L Lay, filed. (kejones, ) (Entered: 05/10/2006) |
| 05/09/06 | 945 | MOTION to Bar Closing Argument on Missing Witnesses by USA as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order) (mmarch, ) (Entered: 05/10/2006) |

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| 05/09/06 | 968 | MOTION to admit exhibits by Jeffrey K Skilling, filed. (Attachments: # 1 Exhibits 1,2,3 mtn t/admit# 2 Exhibits 1,2,3 cont'd on m/admit# 3 Exhibits 4&5 to mtn/admit# 4 Exhibits 4 & 5 cont'd mtn/admit# 5 Exhibits 4 & 5 cont'd mtn t/admit)(ncavazos, ) Additional attachment(s) added on 5/17/2006 (ncavazos, ). Additional attachment(s) added on 5/17/2006 (ncavazos, ). Additional attachment(s) added on 5/17/2006 (ncavazos, ). Additional attachment(s) added on 5/17/2006 (ncavazos, ). Additional attachment(s) added on 5/17/2006 (ncavazos, ). (Entered: 05/17/2006) |
| 05/10/06 | 947 | Opposition by Jeffrey K Skilling as to Jeffrey K Skilling, Kenneth L Lay re 945 MOTION to Bar Closing Argument on Missing Witnesses; , filed. (mkadlubowski, ) (Entered: 05/11/2006) |
| 05/10/06 | 948 | OBJECTION to Court's Jury Charge by Jeffrey K Skilling as to Jeffrey K Skilling, Kenneth L Lay , filed.(kejones, ) (Entered: 05/11/2006) |
| 05/10/06 | 949 | Opposition by Jeffrey K Skilling as to Jeffrey K Skilling, Kenneth L |

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| | | Lay re 944 MOTION to Admit Loss Notification Memoranda;, filed. (mkadlubowski, ) (Entered: 05/11/2006) |
| 05/10/06 | 950 | Minute Entry for proceedings held before Judge Sim Lake :HEARING as to Jeffrey K Skilling, Kenneth L Lay held on 5/10/2006. USA's Motion to Admit Loss Notification Memoranda 944 is denied. Defts' Motion to Admit Exhibits is denied. USA's Motion Barring Closing Arguments on Missing Witnesses is moot. Defts' Supplemental Request for Jury Instructions is denied. Skilling's Motion for Acquittal is denied. Lay's Motion for Acquittal is denied. USA shall provide 15 copies of the redacted Second Superseding Indictment to the court on Monday for purposes of providing them to the jury. Appearances:M. Kline, A. Sayle, M. Secrest, B. Collins, D. Wilson. Sean Berkowitz, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Ronald Gene Woods.(Court Reporter: C. Barron) , filed.(dhansen, ) Additional attachment(s) added on 5/15/2006 (dhansen, ). (Entered: |

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| | | 05/11/2006) |
| 05/10/06 | 951 | Supplemental Proposed Jury Instructions by Jeffrey K Skilling , filed. (mmarch, ) (Entered: 05/11/2006) |
| 05/10/06 | 952 | Declaration and Certification of Business Records (Enron Corp) as to Jeffrey K Skilling, Kenneth L Lay, filed.(mkadlubowski, ) (Entered: 05/11/2006) |
| 05/10/06 | 961 | RESPONSE In Opposition to Skilling's Motion to Admit Exhibits by USA as to Jeffrey K Skilling , filed.(mmarch, ) (Entered: 05/15/2006) |
| 05/11/06 | 946 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 55 held on 5/10/06 before Judge Sim Lake. Court Reporter: Cheryll Barron, filed. (cpeebles) Modified on 5/16/2006 (ckrus, ). Additional attachment(s) added on 7/20/2006 (mgoolsby, ). (Entered: 05/11/2006) |
| 05/12/06 | 954 | DECLARATION AND CERTIFICATION of Electronic Business Records (Enron Corp) as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Part 2 of 5# 2 Part 3 of 5# 3 Part 4 of |

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| | | 5# 4 Part 5 of 5)(ncavazos, ) (Entered: 05/12/2006) |
| 05/12/06 | 955 | Government's TRIAL MEMORANDUM in the Trial of Counts 38 through 41 by Jeffrey K Skilling, filed.(ledwards, ) Additional attachment(s) added on 5/15/2006 (ledwards, ). (Entered: 05/15/2006) |
| 05/12/06 | 956 | OBJECTION by Jeffrey K Skilling re 948 Objection to Court's Revised Jury Charge., filed.(ejuarez, ) (Entered: 05/15/2006) |
| 05/12/06 | 957 | RESPONSE in Opposition by USA as to Jeffrey K Skilling re 924 MOTION to Dismiss Count(s) , filed.(jbradford, ) (Entered: 05/15/2006) |
| 05/12/06 | 958 | MEMORANDUM in Support by Jeffrey K Skilling as to Jeffrey K Skilling, Kenneth L Lay re 924 MOTION to Dismiss Count(s) , filed.(kejones, ) (Entered: 05/15/2006) |
| 05/12/06 | 962 | ORDER denying 924 Motion to Dismiss Counts Dismissed as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 05/15/2006) |
| 05/12/06 | 963 | Minute Entry for proceedings held |

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|---|---|---|
| | | before Judge Sim Lake :CONFERENCE re: Jury Instructions as to Jeffrey K Skilling, Kenneth L Lay held on 5/12/2006 Appearances: Sean Berkowitz, Daniel M Petrocelli, Michael Wayne Ramsey.(Court Reporter: J. Sanchez) , filed.(hcarr, ) (Entered: 05/15/2006) |
| 05/15/06 | 959 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; charge conference - volume 56, held on 5/12/06 before Judge Sim Lake. Court Reporter: Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 7/20/2006 (mgoolsby, ). (Entered: 05/15/2006) |
| 05/15/06 | 960 | Court's Instruction to the Jury as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Continuation and verdict form)(hcarr, ) (Entered: 05/15/2006) |
| 05/15/06 | 965 | Minute Entry for proceedings held before Judge Sim Lake :54th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 5/15/2006. Adjourned until 5/16/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Mark Holscher, |

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| | | Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: G. Dye/ J. Sanchez) , filed.(hcarr, ) (Entered: 05/16/2006) |
| 05/15/06 | 967 | OBJECTIONS to Court's Proposed Instruction on Counts Twelve and Thirteen by Kenneth L Lay , filed. (Attachments: # 1 Proposed Order) (sguevara, ) (Entered: 05/16/2006) |
| 05/16/06 | 964 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay; jury trial - volume 57 held on 5/15/06 before Judge Sim Lake. Court Reporter: Gayle Dye/Johnny Sanchez, filed. (cpeebles) Additional attachment(s) added on 7/20/2006 (mgoolsby, ). (Entered: 05/16/2006) |
| 05/16/06 | 971 | Minute Entry for proceedings held before Judge Sim Lake :55th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 5/16/2006. Adjourned until 5/17/2006 at 8:30 a.m. Appearances: Sean Berkowitz, Bruce Hiler, Mark Holscher, Chip B Lewis, M Randall |

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|---|---|---|
| | | Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: G. Dye/ J. Sanchez) , filed.(hcarr, ) (Entered: 05/17/2006) |
| 05/17/06 | 969 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay Jury Trial - Volume 58 held on 5/16/06 before Judge Sim Lake. Court Reporter: G. Dye/J. Sanchez , filed. (cjan, ) Additional attachment(s) added on 7/20/2006 (mgoolsby, ). (Entered: 05/17/2006) |
| 05/17/06 | 973 | Minute Entry for proceedings held before Judge Sim Lake :56th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 5/17/2006. Jury deliberation begins. Deliberations to resume 5/18/2006 at 8:00 a.m. Appearances: Sean Berkowitz, Bruce Hiler, Chip B Lewis, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: J. Sanchez/ G. Dye) , filed.(hcarr, ) (Entered: 05/18/2006) |
| 05/18/06 | 972 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay |

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|---|---|---|
| | | - Jury Trial Volume 59 held on 5/17/06 before Judge Sim Lake. Court Reporter: G. Dye, filed. (cjan, ) Additional attachment(s) added on 7/19/2006 (mgoolsby, ). Additional attachment(s) added on 7/19/2006 (mgoolsby, ). (Entered: 05/18/2006) |
| 05/18/06 | 976 | Jury deliberated from 8:00 a.m. to 4:00 p.m. Deliberations to resume 5/22/2006 at 8:00 a.m. as to Jeffrey K Skilling, Kenneth L Lay: , filed. (hcarr, ) (Entered: 05/19/2006) |
| 05/18/06 | 977 | Business Records Declaration of Compass Bank as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(mkadlubowski, ) (Entered: 05/19/2006) |
| 05/18/06 | 978 | Business Records Declaration of Compass Bank as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(mkadlubowski, ) (Entered: 05/19/2006) |
| 05/18/06 | 979 | Business Records Declaration of Morgan Stanley & Co Inc as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(mkadlubowski, ) (Entered: 05/19/2006) |

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| 05/18/06 | 980 | Business Records Declaration of Wachovia Securities LLC as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(mkadlubowski, ) (Entered: 05/19/2006) |
| 05/18/06 | 981 | Declaration and Certification of Business Records (Goldman, Sachs & Co) as to Kenneth L Lay, filed.(mkadlubowski, ) Modified on 5/19/2006: REFERENCING KEN LAY ONLY (Reference to Causey, Skilling Entered in Error). (mkadlubowski, ). (Entered: 05/19/2006) |
| 05/18/06 | 989 | Business Records Declaration of Compass Bank as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(mkadlubowski, ) (Entered: 05/19/2006) |
| 05/18/06 | 992 | Business Records Declaration of JPMorgan Chase & Co as to Jeffrey K Skilling, Kenneth L Lay, filed.(mkadlubowski, ) (Entered: 05/19/2006) |
| 05/18/06 | 993 | Declaration and Certification of Business Records (Bank of America NA) as to Jeffrey K Skilling, Kenneth L Lay, filed.(mkadlubowski, ) (Entered: 05/19/2006) |

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| 05/18/06 | 994 | Declaration and Certification of Business Records (Bank of America) NA as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (mkadlubowski, ) (Entered: 05/19/2006) |
| 05/18/06 | 995 | Business Records Declaration of Compass Bank as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(mkadlubowski, ) (Entered: 05/19/2006) |
| 05/18/06 | 996 | Business Records Declaration of Compass Bank as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed.(mkadlubowski, ) (Entered: 05/19/2006) |
| 05/22/06 | 1009 | Jury deliberations continue from 8:00 a.m. until 4:00 p.m. Deliberations resume 5/23/2006 at 8:00 a.m. as to Jeffrey K Skilling, Kenneth L Lay: , filed. (hcarr, ) (Entered: 05/23/2006) |
| 05/23/06 | 1011 | Jury deliberations continue from 8:00 a.m. to 3:00 p.m. Deliberations resume 5/24/2006 at 8:00 a.m. as to Jeffrey K Skilling, Kenneth L Lay: , filed. (hcarr, ) (Entered: 05/24/2006) |

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| 05/23/06 | 1013 | Submission Regarding Jury Instructions by Jeffrey K Skilling as to Jeffrey K Skilling, Kenneth L Lay re 960 Court's Instructions to Jury , filed.<br>(jbradford, ) (Entered: 05/24/2006) |
| 05/24/06 | 1020 | Redacted Jury Note #1 as to Jeffrey K Skilling, Kenneth L Lay, filed. Orginal filed under seal in vault.(dhansen) Modified on 5/26/2006 (ejuarez, ). Bar Code# 4:06CI1178 (Entered: 05/26/2006) |
| 05/24/06 | 1023 | Minute Entry for proceedings held before Judge Sim Lake :60th DAY OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 5/24/2006. Jury Note 1 heard in Court. Jury continues deliberations from 8:00 AM to 4:00 PM. Jury deliberations will resume tomorrow, May 25, 2006 at 8:00 AM. Appearances:J. Hueston, C. Strikland, M. Kline, A. Sayle, B. Collins, M. Secrest, L. Vittor,. Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: Sanchez, Dye, Barron) , filed.(dhansen, ) (Entered: |

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| | | 05/26/2006) |
| 05/25/06 | 1016 | Redacted JURY VERDICT as to Jeffrey K Skilling (2) Guilty on Count 1s,2s,14s,16s-20s,22s-26s,31s-32s,34s-36s, 51S filed. Original filed under seal in vault (4:06CI1169).(dhansen) Modified on 5/26/2006 (jbradford, ). (Entered: 05/25/2006) |
| 05/25/06 | 1018 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay jury trial - volume 60 held on 5/24/06 before Judge Sim Lake. Court Reporter: Gayle Dye , filed. (cpeebles) Additional attachment(s) added on 7/19/2006 (mgoolsby, ). (Entered: 05/25/2006) |
| 05/25/06 | 1021 | Redacted Jury Note #2 as to Jeffrey K Skilling, Kenneth L Lay, filed. Original filed under seal in vault (4:06CI1166).(dhansen) Modified on 5/26/2006 (jbradford, ). (Entered: 05/26/2006) |
| 05/25/06 | 1022 | Redacted Jury Note #3 as to Jeffrey K Skilling, Kenneth L Lay, filed. Original filed under seal in vault (4:06CI1166).(dhansen) Modified on 5/26/2006 (jbradford, ). (Entered: 05/26/2006) |
| 05/25/06 | 1024 | Minute Entry for proceedings held before Judge Sim Lake :61st DAY |

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|---|---|---|
| | | OF JURY TRIAL as to Jeffrey K Skilling, Kenneth L Lay held on 5/25/2006. Jury verdict reached. A hearing shall be held at 2:00 PM today on Mr. Lay's conditions of release. Sentencing set for September 11, 2006. Appearances:J. Hueston, C. Strikland, M. Kline, A. Sayle, B. Collins, M. Secrest, L. Vittor. Sean Berkowitz, Mark Holscher, Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, Ronald Gene Woods.(Court Reporter: Sanchez, Dye, Barron) , filed.(dhansen, ) (Entered: 05/26/2006) |
| 05/25/06 | 1042 | EXHIBIT LIST for Jury Trial by Jeffrey K Skilling, Kenneth L Lay. Document maintained in 2 binders with the Trial Exhibits, filed. (hcarr, ) (Entered: 06/07/2006) |
| 05/25/06 | 1043 | EXHIBIT LIST for Jury Trial by USA as to Jeffrey K Skilling, Kenneth L Lay. Document maintained in 1 binder with Trial Exhibits, filed. (hcarr, ) (Entered: 06/07/2006) |
| 05/26/06 | 1026 | TRANSCRIPT filed in case as to Jeffrey K Skilling, Kenneth L Lay |

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|---|---|---|
| | | - Jury Trial (Volume 61) held on 5/25/06 before Judge Sim Lake. Court Reporter: G. Dye , filed. (cjan, ) Additional attachment(s) added on 7/19/2006 (mgoolsby, ). (Entered: 05/26/2006) |
| 05/26/06 | 1029 | ORDER for Presentence Investigation and Disclosure & Sentencing Dates as to Jeffrey K Skilling, Kenneth L Lay. PSI Completion due by 7/7/2006. Objection to PSI due by 7/28/2006 Response to the objections or expert witness reports filed by opposing counsel due by 8/18/2006 Final PSI due by 9/1/2006 Sentencing set for 9/11/2006 at 01:30 PM in Courtroom 9B before Judge Sim Lake.( Signed by Judge Sim Lake ). Parties notified. (dhansen, ) (Entered: 05/26/2006) |
| 05/31/06 | 1034 | ORDER for Waiver of Victim Notification. The Court waives the requirement placed on the Probation Office as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 05/31/2006) |
| 06/01/06 | 1037 | RESPONSE by Jeffrey K Skilling as to Kenneth L Lay re 1035 MOTION for Extension of Time to |

| **Filed** | **#** | **Docket Text** |
|---|---|---|
| | | File Motion for New Trial and/or Post-Verdict Judgment of Acquittal , filed.(csonnier, ) (Entered: 06/02/2006) |
| 06/01/06 | 1038 | Sealed Document. (mmarch, ) Additional attachment(s) added on 6/8/2006 (ltien, ). Sealed on 6/8/2006 (barcode 4:06CI1270) (ltien, ). (Entered: 06/02/2006) |
| 06/02/06 | 1039 | SEALED Notice and Exhibits by Jeffrey K Skilling, filed. (4:06CI1250) (mewilliams, ) (Entered: 06/05/2006) |
| 06/12/06 | 1044 | MOTION to extend sentencing date, MOTION for Hearing on sentencing issues, MOTION for a trial scheduling order on Forfeiture of Property by Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(kejones, ) (Entered: 06/13/2006) |
| 06/14/06 | 1045 | RESPONSE in Opposition by USA as to 1044 MOTION to extend sentencing date, MOTION for Hearing on sentencing issues, MOTION for a trial scheduling order on Forfeiture of Property by Jeffrey K Skilling, and re 1035 MOTION for Extension of Time to File Motion for New Trial and/or Post-Verdict Judgment of Acquittal , filed.(mmarch, ) Modified on |

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| | | 6/15/2006 (ckrus, ). (Entered: 06/14/2006) |
| 06/15/06 | 1046 | REPLY in Support by Jeffrey K Skilling re 1044 MOTION extend sentencing date MOTION for Hearing MOTION for Forfeiture of Property , filed. (Attachments: # 1 Proposed Order)(swhite, ) (Entered: 06/15/2006) |
| 06/16/06 | 1047 | AMENDED ORDER for Presentence Investigation and Disclosure & Sentencing Dates as to Jeffrey K Skilling, Kenneth L Lay. PSI Completion due by 7/14/2006. Objection to PSI due by 8/4/2006 Responses to objections to the expert witness reports due 08/25/2006 Final PSI due by 9/15/2006 Sentencing reset for 10/23/2006 at 01:00 PM in Courtroom 9B before Judge Sim Lake.( Signed by Judge Sim Lake ). Parties notified. (dhansen) (Entered: 06/16/2006) |
| 06/16/06 | 1048 | Minute Entry for proceedings held before Judge Sim Lake :MOTION HEARING as to Jeffrey K Skilling, Kenneth L Lay held on 6/16/2006 re granting 1044 MOTION extend sentencing date MOTION for Hearing MOTION for Forfeiture of Property. Amended Order for |

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| | | Presentence Investigation and Disclosure & Sentencing Dates to be issued. Govt's motion for money judgment shall be filed by 06/30/06. Defts' response due by 07/21/06. Govt's reply due by 7/31/06. Appearances:Bruce Collins. Chip B Lewis, M Randall Oppenheimer, Daniel M Petrocelli, Michael Wayne Ramsey, Kathryn H Ruemmler, US Probation - H.(Court Reporter: Ed Reed) Deft continued on Bond, filed.(dhansen, ) (Entered: 06/16/2006) |
| 06/20/06 | 1049 | MOTION for Judgment of Acquittal by Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(jbradford, ) (Entered: 06/21/2006) |
| 06/20/06 | 1050 | MOTION For A Judgment Of Acquittal by Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(ypippin, ) (Entered: 06/21/2006) |
| 06/23/06 | 1051 | MEMORANDUM OPINION Denying 953 Motion Requesting Court- Ordered Defense Witness Immunity as to Jeffrey K Skilling, Kenneth L Lay ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 06/23/2006) |

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|---|---|---|
| 06/30/06 | 1052 | MOTION for a Preliminary Order of Forfeiture by USA as to Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Affidavit # 2 Jeffrey Skillling-Proceeds Flowchart# 3 Exhibit B# 4 Proposed Order)(cpeebles) (Entered: 07/03/2006) |
| 07/10/06 | 1053 | MOTION to Request Interviews with Members of the Jury by Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(cpeebles) (Entered: 07/11/2006) |
| 07/11/06 | 1054 | Opposition by USA as to Jeffrey K Skilling re 1053 MOTION to Request Interviews with Members of the Jury , filed.(bgoolsby, ) (Entered: 07/12/2006) |
| 07/11/06 | 1055 | Opposition by USA as to Jeffrey K Skilling re 1050 MOTION Judgment Of Acquittal , filed.(bgoolsby, ) (Entered: 07/12/2006) |
| 07/11/06 | 1056 | Sealed Document Opposition to Defendant's Motion for A Judgment of Acquittal as to Jeffrey K Skilling (Bar Code: 4:06CI1420), filed.(bgoolsby, ) (Entered: 07/12/2006) |
| 07/14/06 | 1057 | Reply in Support by Jeffrey K |

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| | | Skilling re 1053 MOTION to Request Interviews with Members of the Jury , filed.(sbyrum, ) (Entered: 07/17/2006) |
| 07/19/06 | 1058 | REPLY in Support by Jeffrey K Skilling re 1049 MOTION for Judgment of Acquittal, 1050 MOTION Judgment Of Acquittal , filed.(ledwards, ) (Entered: 07/19/2006) |
| 07/19/06 | 1060 | MOTION to Exceed the Page Limit in Support of his Opposition re 1052 MOTION for Order of Forfeiture by Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(swhite) (Entered: 07/20/2006) |
| 07/20/06 | 1061 | MOTION for Extension of Time to File Response as to 1052 MOTION for Order of Forfeiture by Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(jbradford, ) (Entered: 07/21/2006) |
| 07/24/06 | 1063 | ORDER granting 1060 Motion to exceed the page limit as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 07/24/2006) |
| 07/24/06 | 1064 | ORDER granting 1061 Motion for Extension of Time to File Response/Reply as to Jeffrey K |

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| | | Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 07/24/2006) |
| 07/25/06 | 1065 | ORDER denying 1050 Motion for A Judgment of Acquittal as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 07/25/2006) |
| 07/25/06 | 1066 | RESPONSE in Opposition by Jeffrey K Skilling re 1052 MOTION for Order of Forfeiture , filed. (Attachments: # 1 Continuation # 2 Continuation) (mmarch, ) (Entered: 07/26/2006) |
| 07/25/06 | 1067 | Declaration in Support by Jeffrey K Skilling re 1066 Response in Opposition , filed. (Attachments: # 1 Continuation # 2 Continuation) (mmarch, ) (Entered: 07/26/2006) |
| 07/25/06 | 1068 | Sealed Document as to Jeffrey K Skilling, filed. Barcode 4:06CL1702 (mmarch, ) (Entered: 07/26/2006) |
| 07/26/06 | 1069 | MOTION For A Scheduling Order For Sentencing Dates by Jeffrey K Skilling, filed. (ypippin, ) (Entered: 07/27/2006) |
| 07/27/06 | 1070 | NOTICE of Errata for Defendant Jeffrey K. Skilling's Motion for a Scheduling Oder for Sentencing Dates by Jeffrey K Skilling re 1069 |

| Filed | # | Docket Text |
|---|---|---|
| | | MOTION For A Scheduling Order For Sentencing Dates, filed.(pcrawford, ) (Entered: 07/28/2006) |
| 07/28/06 | 1071 | ORDER regarding victims rights as to Richard A Causey, Jeffrey K Skilling ( Signed by Judge Sim Lake ). Parties notified. (swhite) (Entered: 07/28/2006) |
| 08/01/06 | 1072 | MOTION for Extension of Time to File Reply Brief in Support of Motion for Preliminary Order of Forfeiture by USA as to Jeffrey K Skilling, filed. (bgoolsby, ) Additional attachment(s) added on 8/1/2006 (bgoolsby, ). (Entered: 08/01/2006) |
| 08/01/06 | 1073 | ORDER granting 1072 Motion for Extension of Time to File Response/Reply as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 08/02/2006) |
| 08/03/06 | 1076 | TRANSCRIPT filed in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay Motion Hearing held on June 16, 2006 before Judge Lake. Court Reporter: E. Reed Transcript is available for viewing in the office of the clerk , filed. (sbyrum, ) (Entered: 08/07/2006) |

| Filed | # | Docket Text |
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| 08/04/06 | 1074 | Sealed Document as to Jeffrey K Skilling, filed.(cpeebles) Bar Code 4:06CI1739 (Entered: 08/07/2006) |
| 08/04/06 | 1075 | Sealed Document as to Jeffrey K Skilling, filed.(cpeebles) Bar Code #4:06CI1742 (Entered: 08/07/2006) |
| 08/04/06 | 1077 | Sealed Document as to Jeffrey K Skilling, filed. Barcode 4:06CL1755 (mmarch) (Entered: 08/07/2006) |
| 08/07/06 | 1078 | OBJECTION by USA as to Jeffrey K Skilling re 1069 MOTION For A Scheduling Order For Sentencing Dates , filed.(mmarch, ) (Entered: 08/07/2006) |
| 08/11/06 | 1080 | REPLY TO RESPONSE to Motion by USA as to Jeffrey K Skilling, Kenneth L Lay re 1052 MOTION for Order of Forfeiture , filed.(kejones, ) (Entered: 08/11/2006) |
| 08/22/06 | 1083 | REPLY TO RESPONSE in Support of Forfeiture Motion by Jeffrey K Skilling re 1052 MOTION for Order of Forfeiture , filed. (Attachments: # 1 Continuation)(jbradford, ) (Entered: 08/23/2006) |
| 08/22/06 | 1084 | Declaration of Gregg Jarrell In RESPONSE to Government's Reply as to Jeffrey K Skilling, Kenneth L |

| **Filed** | **#** | **Docket Text** |
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| | | Lay re 1052 MOTION for Order of Forfeiture, 1080 Reply to Response , filed.(bgoolsby, ) (Entered: 08/23/2006) |
| 08/24/06 | 1085 | JOINDER by Jeffrey K Skilling as to Jeffrey K Skilling, Kenneth L Lay re 1082 MOTION to Vacate 1019 Order and MOTION to Dismiss the Indictment , filed.(jbradford, ) (Entered: 08/25/2006) |
| 08/25/06 | 1086 | Sealed Document, Response by USA bar code #4:06CI2041 as to Jeffrey K Skilling, filed.(swhite) (Entered: 08/28/2006) |
| 08/25/06 | 1087 | Sealed Document as to Jeffrey K Skilling, filed. Bar Code: 4:06CI2006. (ghassan) (Entered: 08/28/2006) |
| 08/25/06 | 1088 | Sealed Document as to Jeffrey K Skilling, filed. Bar Code: 4:06CI2001. (ghassan) (Entered: 08/28/2006) |
| 09/06/06 | 1089 | RESPONSE in Opposition by USA as to Jeffrey K Skilling, Kenneth L Lay re 1082 MOTION to Vacate 1019 Order MOTION to Dismiss , filed. (Attachments: # 1 Attachment A# 2 Attachment A & B)(ypippin, ) (Entered: 09/07/2006) |

| **Filed** | **#** | **Docket Text** |
|---|---|---|
| 09/12/06 | 1090 | LETTER as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re: permission to speak at sentencing hearings , filed. (ypippin, ) (Entered: 09/12/2006) |
| 09/15/06 | 1093 | RESPONSE to Motion by Russell P. Butler as to Jeffrey K Skilling, Kenneth L Lay re 1091 MOTION re 1082 MOTION to Vacate 1019 Order MOTION to Dismiss , filed.(cjuarez, ) (Entered: 09/15/2006) |
| 09/18/06 | 1095 | Notice of MOTION/Request to Appear at Sentencing on behalf of Certified Enron Corp Saving Plan and Enron Corp ESOP Classes as to Jeffrey K Skilling, filed. (Attachments: # 1 Exhibit # 2 Exhibit)(jbradford, ) (Entered: 09/19/2006) |
| 09/19/06 | 1096 | MOTION order restitution re 1082 MOTION to Vacate 1019 Order MOTION to Dismiss by Russell P. Butler as to Jeffrey K Skilling, Kenneth L Lay, filed. (swhite) (Entered: 09/19/2006) |
| 09/19/06 | 1097 | MOTION for Keli Branch Luther to Appear Pro Hac Vice by Russell P. Butler as to Jeffrey K Skilling, Kenneth L Lay, filed. (ltien, ) (Entered: 09/20/2006) |

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|---|---|---|
| 09/22/06 | 1099 | SEALED MOTION with Proposed Order,filed. (4:06CI2458) (jbradford, ) (Entered: 09/25/2006) |
| 09/22/06 | 1100 | Minute Entry for proceedings held before Judge Sim Lake :TELEPHONE CONFERENCE re: Scheduling Issues as to Jeffrey K Skilling held on 9/22/2006. Sentencing Memorandadue by 10/9/2006. Responses due by 10/16/2006. Appearances: Sean Berkowitz, Daniel M Petrocelli.(Court Reporter: Not Present) , filed.(hcarr, ) (Entered: 09/25/2006) |
| 09/25/06 | 1101 | REVISED FINAL PRESENTENCE INVESTIGATION REPORT (Sealed) as to Jeffrey K Skilling , filed. (jphilio, ) (Entered: 09/25/2006) |
| 09/25/06 | 1102 | CONFIDENTIAL SENTENCING RECOMMENDATION (Sealed) regarding Jeffrey K Skilling , filed. (jphilio, ) (Entered: 09/25/2006) |
| 09/25/06 | 1103 | SEALED ADDENDUM to 1101 Final Presentence Investigation Report as to Jeffrey K Skilling , filed. (jphilio, ) (Entered: 09/25/2006) |
| 10/03/06 | 1109 | SEALED MOTION by Jeffrey K |

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|---|---|---|
| | | Skilling, filed. (ejuarez, ) Modified on 10/4/2006 (ejuarez, ). Bar Code 4:06CI2442 (Entered: 10/04/2006) |
| 10/06/06 | 1110 | Sealed Reply as to Jeffrey K Skilling, (4:06CI2306) filed.(sbyrum, ) Modified on 10/10/2006 (sbyrum, ). (Entered: 10/10/2006) |
| 10/10/06 | 1111 | SEALED MEMORANDUM In Aid Of Sentencing by USA as to Jeffrey K Skilling, filed.(4:06CI2493) (mewilliams, ) (Entered: 10/11/2006) |
| 10/10/06 | 1112 | ORDER Granting Motion to Exceed the Page Limit as to Jeffrey K Skilling ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 10/11/2006) |
| 10/10/06 | 1113 | MOTION for Self Surrender by Jeffrey K Skilling, filed. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Proposed Order)(cpeebles) (Entered: 10/11/2006) |
| 10/10/06 | 1114 | Sealed Document (Bar Code #4:06CI2430) as to Jeffrey K Skilling, filed. (cpeebles) Modified on 10/11/2006 (cpeebles). (Entered: 10/11/2006) |
| 10/10/06 | 1115 | Sealed Document (Bar Code # |

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| | | 4:06CI2436) as to Jeffrey K Skilling, filed. (cpeebles) Modified on 10/11/2006 (cpeebles). (Entered: 10/11/2006) |
| 10/10/06 | 1116 | Sealed Document (Bar Code #4:06CI2433) as to Jeffrey K Skilling, filed. (cpeebles) Modified on 10/11/2006 (cpeebles). (Entered: 10/11/2006) |
| 10/10/06 | 1117 | Sealed Document (Bar Code # 4:06CI2437) as to Jeffrey K Skilling, filed. (cpeebles) Modified on 10/11/2006 (cpeebles). (Entered: 10/11/2006) |
| 10/10/06 | 1118 | Sealed Reply as to Jeffrey K Skilling, filed. (4:06CI1935)(jbradford, ) (Entered: 10/11/2006) |
| 10/10/06 | 1120 | MOTION for bail pending appeal by Jeffrey K Skilling, filed. (Attachments: # 1 Document cont'd part 1 of 6# 2 Document cont'd 2 of 6# 3 Document part 3 of 6# 4 Document part 4 of 6# 5 Document part 5 of 6# 6 Document part 6 of 6)(ncavazos, ) (Entered: 10/11/2006) |
| 10/10/06 | 1121 | MOTION for Leave to exceed the page limit in support of his Motion for Bail Pending Appeal by Jeffrey K Skilling, filed. (Attachments: # |

| Filed | # | Docket Text |
|---|---|---|
| | | 1 Proposed Order)(kettac, ) (Entered: 10/12/2006) |
| 10/11/06 | 1119 | ORDER denying as moot 1069 Motion for a Scheduling Order for Sentencing Dates as to Jeffrey K Skilling (2). Denying 1099 Sealed Motion for Non-Public Information as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 10/11/2006) |
| 10/11/06 | 1123 | SEALED Supplement by Jeffrey K Skilling , filed. Bar Code 4:06Cl2594 (kettac, ) (Entered: 10/13/2006) |
| 10/12/06 | 1122 | Sealed Notice of Errata as to Jeffrey K Skilling's Sentencing Memorandum BAR CODE # 4:06CI1990, filed.(ledwards, ) (Entered: 10/13/2006) |
| 10/13/06 | 1124 | Amicus Curiae Brief of Law Professor Margareth Etienne in Support of Defendant Jeffrey K Skilling, filed.(bjam, ) (Entered: 10/17/2006) |
| 10/13/06 | 1125 | Statement in Support of Restitution by Tittle Plaintiffs as to Richard A Causey, Jeffrey K Skilling, filed. (Attachments: # 1 Continuation # 2 Continuation)(kettac, ) (Entered: 10/17/2006) |

| Filed | # | Docket Text |
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| 10/17/06 | 1127 | Sealed Document as to Jeffrey K Skilling, filed. Barcode 4:06CI2287 (mmar, ) (Entered: 10/19/2006) |
| 10/17/06 | 1130 | MOTION for Release of Bond and Discharge of Sureties by Attorney for the Estate of Kenneth L. Lay as to Kenneth L Lay, filed. (Attachments: # 1 Exhibit - Appearance Bond (2) Exhibit - Order Accepting Quitclaim Deed as Security# 3 Proposed Order on Motion to Release Bond and Discharge Sureties)(pcrawford, ) (Entered: 10/20/2006) |
| 10/17/06 | 1142 | Record Supplement by Jeffrey K Skilling , filed. (Attachments: # 1 Continuation Part 2# 2 Continuation Part 3# 3 Continuation Part 4# 4 Continuation Part 5# 5 Continuation Part 6# 6 Continuation Part 7# 7 Continuation Part 8# 8 Continuation Part 9# 9 Continuation Part 10# 10 Continuation Part 11# 11 Continuation Part 12# 12 Continuation Part 13# 13 Continuation Part 14# 14 Continuation Part 15# 15 Continuation Part 16# 16 Continuation Part 17# 17 |

| **Filed** | **#** | **Docket Text** |
|---|---|---|
| | | Continuation Part 18# 18 Continuation Part 19 of 19)(cpeebles) Modified on 10/23/2006 (cpeebles). (Entered: 10/23/2006) |
| 10/17/06 | 1144 | EXHIBITS to 1142 Record Supplement - Exhibit A (Vol. 2), as to Jeffrey K Skilling , filed. (Attachments: # 1 Continuation Part 2# 2 Continuation Part 3# 3 Continuation Part 4# 4 Continuation Part 5# 5 Continuation Part 6# 6 Continuation Part 7# 7 Continuation Part 8# 8 Continuation Part 9# 9 Continuation Part 10# 10 Continuation Part 11# 11 Continuation Part 12# 12 Continuation Part 13# 13 Continuation Part 14# 14 Continuation Part 15# 15 Continuation Part 16# 16 Continuation Part 17# 17 Continuation Part 18# 18 Continuation Part 19# 19 Continuation Part 20# 20 Continuation Part 21# 21 Continuation Part 22# 22 Continuation Part 23 of 23)(cpeebles) Modified on 10/23/2006 (cpeebles). (Entered: 10/23/2006) |

| **Filed** | **#** | **Docket Text** |
|---|---|---|
| 10/17/06 | 1147 | EXHIBITS to 1142 Record Supplement (Exhibits A (Vol. 3) through C), as to Jeffrey K Skilling , filed. (Attachments: # 1 Continuation Part 2# 2 Continuation Part 3# 3 Continuation Part 4# 4 Continuation Part 5# 5 Continuation Part 6# 6 Continuation Part 7# 7 Continuation Part 8# 8 Continuation Part 9# 9 Continuation Part 11# 10 Continuation Part 12# 11 Continuation Part 13# 12 Continuation Part 14# 13 Continuation Part 15# 14 Continuation Part 16# 15 Continuation Part 17# 16 Continuation Part 18# 17 Continuation Part 19# 18 Continuation Part 20# 19 Continuation Part 21# 20 Continuation Part 22# 21 Continuation Part 23 of 23)(cpeebles) Additional attachment(s) added on 10/26/2006 (jbradford, ). (Entered: 10/23/2006) |
| 10/17/06 | 1159 | EXHIBITS to 1142 Reocrd Supplement, as to Jeffrey K Skilling , filed. (Attachments: # 1 Continuation # 2 Continuation 2# 3 |

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| | | Continuation 3# 4 Continuation 4# 5 Continuation 5# 6 Continuation 6# 7 Continuation 7# 8 Continuation 8# 9 Continuation 9# 10 Continuation 10# 11 Continuation 11# 12 Continuation 12# 13 Continuation 13# 14 Continuation 14# 15 Continuation 15# 16 Continuation 16# 17 Continuation 17)(jbradford, ) (Entered: 10/26/2006) |
| 10/18/06 | 1128 | Sealed Response as to Jeffrey K Skilling, filed. (4:06CI2552)(jbradford, ) (Entered: 10/19/2006) |
| 10/19/06 | 1131 | Sealed Response as to Jeffrey K Skilling (Bar Code #4:06CI2554), filed. (bgoolsby, ) (Entered: 10/20/2006) |
| 10/19/06 | 1133 | MOTION for Frank Bowman to Appear Pro Hac Vice by Jeffrey K Skilling, filed. (bjam, ) (Entered: 10/20/2006) |
| 10/19/06 | 1140 | Sealed Response (Bar Code #4:06CI1937) as to Jeffrey K Skilling, filed. (cpeebles) (Entered: 10/23/2006) |
| 10/19/06 | 1141 | REPLY in Support by Jeffrey K Skilling of the 1120 MOTION for bail pending appeal, filed. (Attachments: # 1 Exhibits A and |

| Filed | # | Docket Text |
|---|---|---|
| | | B filed UNDER SEAL (Bar Code 4:06CI2587)# 2 Exhibit C# 3 Exhibit C (part 2)# 4 Exhibit C (part 3)# 5 Exhibit C (Part 4)# 6 Exhibit C (Part 5)# 7 Exhibit C (Part 6)) (psmith, ) Additional attachment(s) added on 10/23/2006 (psmith, ). (Entered: 10/23/2006) |
| 10/20/06 | 1129 | SEALED SECOND ADDENDUM to 1101 Final Presentence Investigation Report as to Jeffrey K Skilling , filed. (jphilio, ) (Entered: 10/20/2006) |
| 10/20/06 | 1132 | Sealed Document, Opposition to the Title Plaintiff's Request for Restitution, bar code no 4:06CI1956 as to Jeffrey K Skilling, Kenneth L Lay, filed. (swhite) (Entered: 10/20/2006) |
| 10/20/06 | 1134 | ORDER granting 1133 Motion to Appear Pro Hac Vice as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 10/20/2006) |
| 10/20/06 | 1135 | ORDER: The Motion of James C. Ross to Intervene is DENIED for the reasons stated in the United States' Opposition. ( Signed by Judge Sim Lake ). Parties notified. (dhansen, ) (Entered: 10/20/2006) |

| **Filed** | **#** | **Docket Text** |
|---|---|---|
| 10/20/06 | 1137 | RESPONSE to Motion to Intervene of James C Ross by Jeffrey K Skilling , filed.(sbyrum, ) (Entered: 10/23/2006) |
| 10/20/06 | 1138 | Opposition to Motion to Intervene by USA as to Jeffrey K Skilling , filed. (mmar, ) (Entered: 10/23/2006) |
| 10/20/06 | 1139 | Statement in Support of Restitution to the Certified Class in Newby v Enron by The Regents of the University of California , filed.(sbyrum, ) (Entered: 10/23/2006) |
| 10/20/06 | 1151 | MOTION to Intervene by James C. Ross as to Jeffrey K Skilling, filed. (Attachments: # 1 Exhibit # 2 Affidavit # 3 Proposed Order)(dhansen, ) (Entered: 10/24/2006) |
| 10/20/06 | 1152 | NOTICE of Motion to Intervene by James C. Ross as to Jeffrey K Skilling re 1151 MOTION to Intervene, filed.(dhansen, ) (Entered: 10/24/2006) |
| 10/23/06 | 1143 | ORDER OF FORFEITURE as to Jeffrey K Skilling ( Signed by Judge Sim Lake ). (Attachments: # 1 Exhibit Settlement Agreement) Parties notified. (dhansen, ) (Entered: 10/23/2006) |

| Filed | # | Docket Text |
|---|---|---|
| 10/23/06 | 1145 | MEMORANDUM OPINION AND ORDER DENYING objection to the obstruction of justice enhancement as to Jeffrey K Skilling ( Signed by Judge Sim Lake ). Parties notified. (dhansen, ). (Entered: 10/23/2006) |
| 10/23/06 | 1146 | MEMORANDUM OPINION AND ORDER Denying 1120 MOTION for bail pending appeal as to Jeffrey K Skilling ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 10/23/2006) |
| 10/23/06 | 1148 | MEMORANDUM OPINION AND ORDER Denying 1053 MOTION to Request Interviews with Members of the Jury as to Jeffrey K Skilling ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 10/23/2006) |
| 10/23/06 | 1149 | Minute Entry for proceedings held before Judge Sim Lake :Sentencing held on 10/23/2006 for Jeffrey K Skilling (2), Count(s) 120 months as to counts 2 and 14 to be served consecutively. 52 months as to counts 1, 16-20, 22-26, 31, 32, 34-36, 51 to be served concurrently and consecutively to counts 2 and 14. 3 years supervised release. No fine. $1,9000 special assessment. |

| **Filed** | **#** | **Docket Text** |
|---|---|---|
| | | Appearances: Sean Berkowitz, Daniel M Petrocelli, US Probation - H.(Court Reporter: K. Metzger) Deft continued on Bond, filed.(hcarr, ) (Entered: 10/23/2006) |
| 10/23/06 | 1150 | SEALED ORDER as to Jeffrey K Skilling, entered and placed in vault. ( Signed by Judge Sim Lake ). Parties notified. (bjam, ) (Entered: 10/24/2006) |
| 10/24/06 | 1154 | UNITED STATES' Opposition to Defendant Jeffrey K. Skilling's Record Supplement (Ref. Docket #1142), filed.(pcrawford, ) (Entered: 10/25/2006) |
| 10/25/06 | 1155 | JUDGMENT as to Jeffrey K Skilling ( Signed by Judge Sim Lake ). Parties notified. (sbyrum, ) (Entered: 10/25/2006) |
| 10/25/06 | 1156 | STATEMENT OF REASONS (Sealed) as to Jeffrey K Skilling , filed. (sbyrum, ) (Entered: 10/25/2006) |
| 10/25/06 | 1157 | REPLY IN SUPPORT by Jeffrey K Skilling re 1142 Record Supplement,, , filed.(smurdock, ) Additional attachment(s) added on 10/25/2006 (smurdock, ). (Entered: 10/25/2006) |
| 10/25/06 | 1158 | TRANSCRIPT as to Jeffrey K |

| **Filed** | **#** | **Docket Text** |
|---|---|---|
| | | Skilling re: Sentencing held on October 23, 2006 before Judge Lake. Court Reporter: Kathy Metzger. Transcript is available for viewing in the office of the clerk , filed. (Attachments: # 1 Continuation # 2 Continuation # 3 Continuation) (swhite) (Entered: 10/26/2006) |
| 10/27/06 | 1162 | Minute Entry for proceedings held before Judge Sim Lake :Telephone Conference on Defendant's Request for Access and Request to Supplement the Record as to Jeffrey K Skilling held on 10/27/2006 Appearances:M. Kline, D. Wilson. Sean Berkowitz.(Court Reporter: K. Metzger) , filed. (hcarr, ) (Entered: 10/31/2006) |
| 10/31/06 | 1161 | NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit by Jeffrey K Skilling re 1146 Order, 1155 Judgment (Filing fee $ 455, receipt number o.) ,filed.(kettac, ) (Entered: 10/31/2006) |
| 10/31/06 | | USCA Appeal Fees received $ 455.00, receipt number 4-575661 as to Jeffrey K Skilling re 1161 Notice of Appeal - Judgment and Sentence; Paid by Sherri Sera. ,filed.(ejones, ) (Entered: |

| Filed | # | Docket Text |
|---|---|---|
| | | 10/31/2006) |
| 11/01/06 | 1164 | Notice to the Circuit of an Appeal to US Court of Appeals for the Fifth Circuit as to Jeffrey K Skilling. One DKT13 transcript order form WAS mailed to appellant's counsel. Fee status: PAID. The following Notice of Appeal and related motions are pending in the District Court: 1161 Notice of Appeal - Judgment and Sentence, 1130 MOTION to Release Bond Obligation ,filed.(jdavenport, ) Additional attachment(s) added on 11/1/2006 (jdavenport, ). Additional attachment(s) added on 11/1/2006 (jdavenport, ). (Entered: 11/01/2006) |
| 11/13/06 | 1178 | TRANSCRIPT ORDER FORM by Jeffrey K Skilling. Transcript is already on file in Clerk's Office; This is to order a transcript of Sealed portions only of proceedings held on 12/01/2005, 1/30/2006, 2/13/2006, 2/15/2006, 3/23/2006, 4/6/2006, 4/17/2006, 4/18/2006 before Judge Lake. Court Reporter: Metzger, Barron, Sanchez, Dye. This order form relates to the following: 1161 Notice of Appeal - Judgment and |

| **Filed** | **#** | **Docket Text** |
|---|---|---|
| | | Sentence ,filed. (jbradford, ) (Entered: 11/15/2006) |
| 11/14/06 | 1173 | ORDER TO SURRENDER on December 12, 2006 at 2:00 p.m. to FCI Waseca, 1000 University Drive, S.W., Waseca, MN 56093 as to Jeffrey K Skilling. ( Signed by Judge Sim Lake ). Parties notified. (hcarr, ) (Entered: 11/15/2006) |
| 11/15/06 | 1175 | Notice of Non-Compliance as to Jeffrey K Skilling. DKT13. Party ntfd ,filed. (jbradford, ) (Entered: 11/15/2006) |
| 11/17/06 | | Electronic record on appeal certified to Fifth Circuit Court of Appeals as to Jeffrey K Skilling re: 1161 Notice of Appeal - Judgment and Sentence; Fifth CCA Case Number 06-20885 ,filed.(jdavenport, ) (Entered: 11/17/2006) |
| 11/17/06 | 1184 | ORDER of USCA for the Fifth Circuit In re: Butler, advising the unopposed motion to extend the time to consider the petition for writ of mandamus is GRANTED. No ruling is made at this time on the motion to stay the district court's order. , filed. USCCA 06-20848(jdavenport, ) (Entered: 11/18/2006) |

| Filed | # | Docket Text |
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| 11/28/06 | 1190 | Transmittal Letter on Appeal re: 1161 Notice of Appeal - Judgment and Sentence. A 242 volume paper copy of the certified electronic record is being transmitted to the Fifth Circuit Court of Appeals. (USCA No. 06- 20885) ,filed.(jdavenport, ) (Entered: 11/28/2006) |
| 11/30/06 | 1191 | Transmittal Letter on Appeal re: 1161 Notice of Appeal - Judgment and Sentence. An 18 volume paper copy of the record is being transmitted to the Fifth Circuit Court of Appeals. (USCA No. 06-20885) ,filed.(jdavenport, ) (Entered: 11/30/2006) |
| 12/06/06 | 1192 | EMAIL communication between counsel for Jeffrey K Skilling and Government re: viewing of sealed documents , filed. (hcarr, ) (Entered: 12/06/2006) |
| 12/12/06 | 1194 | Order of USCA for the Fifth Circuit (copy) as to Jeffrey K Skilling dated 12/12/2006 re: 1161 Notice of Appeal - Judgment and Sentence; USCA No. 06-20885. Motion for Bail Pending Appeal is Denied.(rwestmoreland, ) (Entered: 12/13/2006) |
| 12/18/06 | 1196 | RETURN of Publication of Order Executed on 12/17/2006 to |

| Filed | # | Docket Text |
|---|---|---|
| | | Houston Chronicle as to Jeffrey K Skilling, filed. (sbyrum, ) (Entered: 12/19/2006) |
| 01/05/07 | 1198 | TRANSCRIPT ORDER FORM by Jeffrey K Skilling. This is to Order a Transcript of all witnesses for USA held on 2/27/06, 2/28/06 before Judge Lake.. This order form relates to the following: 1161 Notice of Appeal - Judgment and Sentence,filed.(kettac, ) (Entered: 01/09/2007) |
| 01/08/07 | 1200 | Fifth Circuit Letter to Mr. Petrocelli Court of Appeals as to Jeffrey K Skilling ( USCA No: 06-20885),filed.(kettac, ) (Entered: 01/09/2007) |
| 01/08/07 | 1206 | Notice of Docketing Notice of Appeal from US Court of Appeals for the Fifth Circuit as to Jeffrey K Skilling for 1161 Notice of Appeal - Judgment and Sentence. USCA No. 06-20885,filed.(sbyrum, ) (Entered: 01/10/2007) |
| 01/08/07 | 1207 | Order of USCA for the Fifth Circuit (copy) as to Jeffrey K Skilling dated 12/11/06 re: 1161 Notice of Appeal - Judgment and Sentence ; USCA No. 06-20885. Defendant's report date is stayed pending further order of the court.,filed.(kettac, ) (Entered: |

| Filed | # | Docket Text |
|---|---|---|
| | | 01/11/2007) |
| 01/08/07 | 1208 | Opinion of USCA for the Fifth Circuit (certified copy) as to Jeffrey K Skilling dated 12/12/2006 re: 1161 Notice of Appeal - Judgment and Sentence ; USCA No. 06-20885. Defendant's motion for bail pending appeal is DENIED. The stay of defendant's surrender date is lifted,filed.(ltien, ) (Entered: 01/11/2007) |
| 01/09/07 | 1201 | TRANSCRIPT (Sealed), filed. (pawilliams, ) (Entered: 01/09/2007) |
| 01/09/07 | 1202 | TRANSCRIPT (Sealed), filed. (pawilliams, ) (Entered: 01/09/2007) |
| 01/09/07 | 1203 | TRANSCRIPT (Sealed), filed. (pawilliams, ) (Entered: 01/09/2007) |
| 01/09/07 | 1204 | TRANSCRIPT (Sealed), filed. (pawilliams, ) (Entered: 01/09/2007) |
| 01/09/07 | 1205 | TRANSCRIPT (Sealed), filed. (pawilliams, ) (Entered: 01/09/2007) |
| 04/09/07 | 1214 | SEALED Juror Questionnaire, filed.(dhansen, ) (Entered: 04/09/2007) |
| 04/13/07 | 1215 | TRANSCRIPT (Sealed), filed. |

| Filed | # | Docket Text |
|---|---|---|
| | | (smurdock, ) (Entered: 04/19/2007) |
| 04/16/07 | 1216 | TRANSCRIPT (Sealed), filed. (ltrevino, ) (Entered: 04/19/2007) |
| 04/16/07 | 1217 | TRANSCRIPT (Sealed), filed. (ltrevino, ) (Entered: 04/19/2007) |
| 04/16/07 | 1218 | TRANSCRIPT (Sealed), filed. (jegonzalez, ) (Entered: 04/19/2007) |
| 04/16/07 | 1219 | TRANSCRIPT (Sealed), filed. (smurdock, ) (Entered: 04/19/2007) |
| 05/02/07 | | Supplemental Electronic record on appeal certified to Fifth Circuit Court of Appeals as to Jeffrey K Skilling re: 1161 Notice of Appeal - Judgment and Sentence. USCA No. 06-20885. Record begins at doc 1184.,filed. (jbradford, ) (Entered: 05/02/2007) |
| 06/01/07 | 1221 | Transmittal Letter on Appeal re: 1161 Notice of Appeal - Judgment and Sentence. A paper copy of the certified electronic supplemental record beginning at entry 1184 is being transmitted to the Fifth Circuit Court of Appeals. (USCA No. 06-20885),filed.(jzielske, ) (Entered: 06/01/2007) |
| 07/12/07 | 1224 | Transmittal Letter on Appeal Certified re: 1161 Notice of Appeal - Judgment and Sentence. CDs containing the electronic record |

| Filed | # | Docket Text |
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| | | are being sent to Mr. Devine,filed.(hler, ) (Entered: 07/12/2007) |
| 07/16/07 | | Supplmental Electronic record on appeal certified to Fifth Circuit Court of Appeals (documents 129,134,202,203,256,726 and 749) as to Jeffrey K Skilling re: 1161 Notice of Appeal - Judgment and Sentence. USCA No. 06-20885,filed.(hler, ) (Entered: 07/16/2007) |
| 07/19/07 | 1225 | Transmittal Letter on Supplemental Appeal Certified re: 1161 Notice of Appeal - Judgment and Sentence. A paper copy of the electronic record is being transmitted to the Fifth Circuit Court of Appeals. (USCA No. 06-20885),filed.(hler, ) (Entered: 07/19/2007) |
| 08/23/07 | | Mailed via FedEX a completed set of ROA Cds to Mr. Devine as to Jeffrey K Skilling:, per phone call request filed. (hler, ) (Entered: 08/23/2007) |
| 09/11/07 | | Attorney update in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay. Attorney Doug Wilson for USA added for appeals purposes. (dhansen, ) (Entered: 09/11/2007) |

| Filed | # | Docket Text |
|---|---|---|
| 10/02/07 | 1226 | MOTION for Lea A. Carlisle to Appear Pro Hac Vice by USA,, filed. (jdav, ) (Entered: 10/03/2007) |
| 10/03/07 | | Attorney update in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay. Attorney Lea A Carlisle for USA added. (ypippin, ) (Entered: 10/03/2007) |
| 10/03/07 | 1227 | ORDER granting 1226 Motion to Appear Pro Hac Vice as to Richard A Causey (1), Jeffrey K Skilling (2), Kenneth L Lay (3).(Signed by Judge Sim Lake.) Parties notified.(ypippin, ) (Entered: 10/03/2007) |
| 02/12/08 | 1228 | LETTER of Inquiry from David T Kidd Jr as to Jeffrey K Skilling, Kenneth L Lay, filed. (ltien, ) (Entered: 02/13/2008) |
| 02/25/08 | 1229 | MOTION Transfer Custody of Bond *to US Marshals* by USA as to Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(Carlisle, Lea) Additional attachment(s) added on 2/29/2008 (sgreen, ). (Entered: 02/25/2008) |
| 02/25/08 | | Financial Document re: 1229 MOTION Transfer Custody of Bond *to US Marshals* Referred to Finance/Houston for approval as to Jeffrey K Skilling, filed. (hcarr, ) |

| **Filed** | **#** | **Docket Text** |
|---|---|---|
| | | (Entered: 02/27/2008) |
| 02/20/09 | 1230 | Per Curiam of USCA for the Fifth Circuit (copy) as to Jeffrey K Skilling dated 1/6/2009 re: 1161 Notice of Appeal - Judgment and Sentence ; USCA No. 06-20885. Affirm Skilling's convictions; We vacate the sentence and Remand for resentencing,filed. (Attachments: # 1 Continuation, # 2 Continuation)(jewilliams, ) (Entered: 02/23/2009) |
| 02/20/09 | 1231 | Judgment of USCA for the Fifth Circuit (certified copy) as to Jeffrey K Skilling dated 1/6/2009 issued as mandate 2/18/2009; re: 1161 Notice of Appeal - Judgment and Sentence ; USCA No. 06-20885. Judgment of the District Court is Affirmed in part and vacated in part, and the cause is remanded to the District Court for further proceedings in accordance with the opinion of this court.,filed.(jewilliams, ) (Entered: 02/23/2009) |
| 02/24/09 | 1232 | MOTION to Amend 1229 MOTION Transfer Custody of Bond *to US Marshals* filed by USA *Amended Certificate of Conference* by USA as to Jeffrey K Skilling, filed. (Carlisle, Lea) (Entered: |

| Filed | # | Docket Text |
|---|---|---|
| | | 02/24/2009) |
| 02/24/09 | 1233 | ORDER granting 1229 MOTION Transfer Custody of Bond *to US Marshals*, as to Jeffrey K Skilling.(Signed by Judge Sim Lake) Parties notified. (hcarr, ) (Entered: 02/25/2009) |
| 02/25/09 | | Disbursement of Bond to United States Marshals Service, $5,000,000.00 on 2/25/2009 as to Jeffrey K Skilling, filed. (agould, ) (Entered: 02/25/2009) |
| 03/20/09 | | Attorney update in case as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay. Attorney Steven A Tyrrell for USA added. (hcarr, ) (Entered: 03/20/2009) |
| 03/26/09 | 1234 | ORDER as to Jeffrey K Skilling Re-Sentencing set for 7/30/2009 at 02:00 PM in Courtroom 9B before Judge Sim Lake. Government and Skilling may file sentencing memorandum by 6/19/2009. Responses due by 7/10/2009. (Signed by Judge Sim Lake) Parties notified. (hcarr, ) (Entered: 03/26/2009) |
| 03/31/09 | 1235 | LETTER as to Jeffrey K Skilling re: loss of retirement money by Georgia Matula, filed. (mewilliams, ) (Entered: 04/01/2009) |

| **Filed** | **#** | **Docket Text** |
|---|---|---|
| 04/20/09 | 1236 | LETTER from Steve Marnoy, CEO re: Jeff Skilling, filed. (lfilmore, ) (Entered: 04/20/2009) |
| 04/21/09 | 1237 | Minute Entry for proceedings held before Judge Sim Lake: Telephone Conference as to Jeffrey K Skilling held on 4/21/2009 Appearances: Daniel M Petrocelli, Steven A Tyrrell.(Court Reporter: K. Metzger), filed.(hcarr, ) (Entered: 04/21/2009) |
| 04/28/09 | 1238 | Joint MOTION for Extension of Time to File Defendants' Motion for a New Trial, and to Vacate the Court's Order of March 26, 2009 Concerning Defendant's Resentencing by Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(Petrocelli, Daniel) (Entered: 04/28/2009) |
| 04/28/09 | 1239 | PROPOSED ORDER re: 1238 Joint MOTION for Extension of Time to File Defendants' Motion for a New Trial, and to Vacate the Court's Order of March 26, 2009 Concerning Defendant's Resentencing as to Jeffrey K Skilling, filed.(Petrocelli, Daniel) (Entered: 04/28/2009) |
| 04/29/09 | 1240 | ORDER as to Jeffrey K Skilling granting 1238 Joint MOTION for Extension of Time to File |

| Filed | # | Docket Text |
|---|---|---|
| | | Defendants' Motion for a New Trial, and to Vacate the Court's Order of March 26, 2009 Concerning Defendant's Resentencing. Rule 33(b)(1)Motion Filing due by 7/10/2009, Responses due by 9/4/2009, Replies due by 9/25/2009. Vacating 1234 Order. (Signed by Judge Sim Lake) Parties notified. (hcarr, ) (Entered: 04/29/2009) |
| 06/08/09 | 1241 | MOTION to Correct Clerical Error under Rule 36 Motion for Return of Seized Property under 41 (g) by Jonathan Lee Riches as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (dperez, ) (Entered: 06/08/2009) |
| 06/12/09 | 1242 | ORDER striking 1241 Motion to correct clerical error and for return of seized propberty as to Richard A Causey (1), Jeffrey K Skilling (2), Kenneth L Lay (3).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 06/12/2009) |
| 06/25/09 | 1243 | Unopposed MOTION for Extension of Time to File Defendant's Motion For A New Trial Based On Newly Discovered Evidence by Jeffrey K Skilling as to Richard A Causey, |

| Filed | # | Docket Text |
|---|---|---|
| | | Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(Petrocelli, Daniel) (Entered: 06/25/2009) |
| 06/25/09 | 1245 | NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit by Jonathan Lee Riches re 1242 Order on Motion for Miscellaneous Relief (Filing fee $ 455),filed.(blacy, ) (Entered: 06/26/2009) |
| 06/26/09 | 1244 | ORDER granting 1243 Motion for Extension of Time to File as to Jeffrey K Skilling (2). Rule 33(b)(1) Motion due 8/10/2009; Response due 10/5/2009; Replies due 10/26/2009.(Signed by Judge Sim Lake.) Parties notified. (hcarr, ) (Entered: 06/26/2009) |
| 06/29/09 | 1246 | Notice of the Filing of an Appeal as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay. DKT13 transcript order form WAS NOT mailed to appellant. Fee status: Not Paid. The following Notice of Appeal and related motions are pending in the District Court: 1245 Notice of Appeal - Judgment and Sentence,filed. (Attachments: # 1 NOA, # 2 Order)(blacy, ) (Additional attachment(s) added on 6/29/2009: # 3 Docket Sheet) (blacy, |

| Filed | # | Docket Text |
|---|---|---|
| | | ). (Entered: 06/29/2009) |
| 07/06/09 | 1247 | MAIL RETURNED UNDELIVERABLE re: 1246 sent to Barry S Berger as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (ypippin, ) (Entered: 07/07/2009) |
| 07/06/09 | 1248 | Notice of Assignment of USCA No. 09-20427 as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay re: 1245 Notice of Appeal - Judgment and Sentence,filed.(mmar, ) (Entered: 07/07/2009) |
| 07/13/09 | 1249 | Notice of Non-Compliance for Jonathan Lee Riches regarding appeal as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay. Filing fee needed. Party ntfd,filed. (ypippin, ) (Entered: 07/13/2009) |
| 07/20/09 | 1250 | MAIL RETURNED UNDELIVERABLE re: 1246 sent to Linda Lacewell as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (smurdock, ) (Entered: 07/20/2009) |
| 08/03/09 | 1251 | MOTION for Extension of Time to File Motion for a New Trial Based on Newly Discovered Evidence by Jeffrey K Skilling as to Richard A Causey, Jeffrey K Skilling, Kenneth |

| Filed | # | Docket Text |
|---|---|---|
| | | L Lay, filed. (Attachments: # 1 Proposed Order Proposed Order)(Petrocelli, Daniel) (Entered: 08/03/2009) |
| 08/04/09 | 1252 | ORDER granting 1251 Motion for Extension of Time to File as to Jeffrey K Skilling (2). Motion for new trial due 9/9/2009. Response to motion due 11/4/2009. Reply due 11/25/2009.(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 08/04/2009) |
| 09/08/09 | 1253 | Unopposed MOTION for Extension of Time to File Motion for a New Trial Based on Newly Discovered Evidence by Jeffrey K Skilling as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(Petrocelli, Daniel) (Entered: 09/08/2009) |
| 09/09/09 | 1254 | ORDER granting 1253 Motion for Extension of Time to File Motion for a New Trial as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 09/09/2009) |
| 09/28/09 | 1256 | MOTION for Extension of Time to File Final Unopposed Motion to Further Extend the Time Limit for Filing Motion for a New Trial Based on Newly Discovered |

| **Filed** | **#** | **Docket Text** |
|---|---|---|
| | | Evidence by Jeffrey K Skilling, filed. (Attachments: # 1 Proposed Order)(Petrocelli, Daniel) (Entered: 09/28/2009) |
| 09/29/09 | 1257 | ORDER granting 1256 Motion for Extension of Time to File Motion for New Trial as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 09/29/2009) |
| 10/28/09 | 1258 | Unopposed MOTION for Extension of Time to File Motion for a New Trial Based on Newly Discovered Evidence by Jeffrey K Skilling as to Richard A Causey, Jeffrey K Skilling, Kenneth L Lay, filed. (Attachments: # 1 Proposed Order)(Petrocelli, Daniel) (Entered: 10/28/2009) |
| 10/29/09 | 1259 | ORDER granting 1258 Motion for Extension of Time to File as to Jeffrey K Skilling (2).(Signed by Judge Sim Lake.) Parties notified.(hcarr, ) (Entered: 10/29/2009) |
| 11/03/09 | 1260 | The petition for a writ of certiorari filed with the Supreme Court has been granted. Court of Appeals number 06-20885 as to Jeffrey K Skilling.,filed. (hler, ) (Entered: 11/06/2009) |

# APPENDIX B

# CHRONOLOGICAL LIST OF DOCKET ENTRIES

## United States Court of Appeals for the Fifth Circuit

## No. 06-20885

| Filed | Docket Text |
|---|---|
| 11/16/06 | Direct criminal case docketed. NOA filed by Appellant Jeffrey K Skilling. [06- 20885] (CPD) |
| 11/20/06 | Motion filed by Appellant Jeffrey K Skilling for bail pending appeal [5609298-1] Response/Opposition due on 11/27/06. Date of COS: 11/16/06 Sufficient [Y/N]: Y [06-20885] (CPD) |
| 11/20/06 | Record requested from district court. [06-20885] ROA due on 12/5/06. (CPD) |
| 11/20/06 | Appearance form filed by Daniel M Petrocelli for Appellant Jeffrey K Skilling. [06-20885] ( No. of forms filed: 1) (CPD) |
| 11/20/06 | Appendix of Exhibits filed by Appellant Jeffrey K Skilling in support of motion for bail pending appeal (Volumes 1 and 2) [5609298-1] by Appellant Jeffrey K Skilling. [5609567-1] [06-20885] (CPD) |
| 11/20/06 | Appendix of Exhibits filed by Appellant Jeffrey K Skilling in support of motion for bail pending appeal (Exhibits 34-35) [5609298-1] by Appellant Jeffrey K Skilling. [5609572-1] [06-20885] (CPD) |
| 11/20/06 | Transcript order received from Appellant Jeffrey K Skilling and returned because each |

| Filed | Docket Text |
|---|---|
| | ct reporter requires a separate order form [06-20885] Transcript Order ddl updated to 12/15/06 for Jeffrey K Skilling. (JMW) |
| 11/28/06 | Response/opposition filed by Appellee USA to motion for bail pending appeal [5609298-1] by Appellant Jeffrey K Skilling Response/Opposition ddl satisfied. Date of COS: 11/27/06 Sufficient [Y/N]: y [5613609-1] [06-20885] (AS) |
| 11/28/06 | Appearance form filed by Joseph Douglas Wilson for Appellee USA. [06-20885] (No. of forms filed: 1) (LBM) |
| 11/29/06 | Reply filed by Appellant Jeffrey K Skilling to response/opposition [5613609-1], motion for bail pending appeal [5609298-1] Sufficient [Y/N]: y [5615812-1] [06- 20885] (AS) |
| 11/30/06 | Appearance form filed by Brian C Devine for Appellant Jeffrey K Skilling, Mark C Holscher for Appellant Jeffrey K Skilling, Mark Randall Oppenheimer for Appellant Jeffrey K Skilling, Matthew T Kline for Appellant Jeffrey K Skilling. [06-20885] ( No. of forms filed: 4) (LBM) |
| 11/30/06 | Appearance form filed by Ronald G Woods for Appellant Jeffrey K Skilling. [06-20885] ( No. of forms filed: 1) (LBM) |
| 12/01/06 | Record on appeal filed. Vol(s) of Electronic Pleadings: 161 Vol(s) of Electronic Transcripts: 81. [06-20885] ROA ddl satisfied. |
| 12/04/06 | Notice received from Appellant Jeffrey K Skilling that transcript is already on file. [06-20885] Transcript Order ddl satisfied. (AS) |
| 12/04/06 | Presentence Investigation Report filed. |

| **Filed** | **Docket Text** |
|---|---|
| | SEALED: 1 env. (PSI, SOR, & rec.). [06-20885] |
| 12/04/06 | Supplemental record on appeal filed. Supplement #: 1 Vol(s) of Paper Pleadings: 6 SEALED: 1 env. (Vols 1-6/docs. 233, 736, 761, 792, 798, 801). 2 Boxes (1- docs 228, 233, 238, 243-46, 264, 318, 328, 337-38, 371-72, 491, 497, 504-05, 546, 549, 553, 554,558, 564, 568-69, 571, 588, 595-96, 599, 633, 635, 668-69, 676-77, 682, 744, 765, 769-73, 794, 779, 781, 787, 795, 810, 827, 840, 877, 879; 1-docs 1038-39, 1056, 1068, 1074-75, 1077, 1086, 1087-88, 1099, 1109-11, 1114-18, 1123, 1127, 1128, 1131-32, 1140). [06-20885] (LFM) |
| 12/07/06 | Supplemental record on appeal filed. Supplement #: 2 Vol(s) of Electronic Transcripts: 4. [06-20885] ROA ddl satisfied. (LFM) |
| 12/07/06 | Briefing notice issued. [06-20885] A/Pet's Brief due on 1/16/07 for Jeffrey K Skilling. (LFM) |
| 12/08/06 | Briefing notice dated 12/7/06 suspended. [06-20885] A/Pet's Brief ddl canceled. (AS) |
| 12/08/06 | Transcript order acknowledgment received 12/6/06 from Court Reporter Cheryll K Barron. Estimated pages: 40 Date Financial Arrangements Made: 11/27/06 [06-20885] Transcript due on 1/29/07 for Cheryll K Barron. Ct. Reporter Discount Date is 2/26/07 for Cheryll K Barron. (JMW) |
| 12/11/06 | COURT Order filed staying defendant's report date pending further order of the court. This order is entered solely to allow this court to give careful consideration to the request for bail pending appeal. (PEH) [5626974-1] Copies to all counsel. [06-20885] (TMR) |

| Filed | Docket Text |
|---|---|
| 12/12/06 | COURT Order filed denying motion for bail pending appeal (IN DETAIL) [5609298-1] (PEH) Copies to all counsel. [06-20885] (AS) |
| 12/12/06 | CORRECTED COURT Order filed denying appellant's motion for bail pending appeal. (IN DETAIL) [5609298-1] (PEH) Copies to all counsel. [06-20885] (AS) |
| 01/08/07 | Record on appeal returned to 5CCA. SEALED: 1 env (PSI) [06-20885] (AS) |
| 01/19/07 | Transcript filed in district court by Court Reporter Cheryll K Barron on 1/5/07. [06-20885] Transcript ddl satisfied. Ct. Reporter Discount Date canceled. (JMW) |
| 03/16/07 | Transcript order acknowledgment received from Court Reporter Johnny Sanchez. Date Financial Arrangements Made: 11/27/06 [06-20885] Transcript due on 3/19/07 for Johnny Sanchez. Ct. Reporter Discount Date is 3/19/07 for Johnny Sanchez. (Via e-mail from court reporter) (JMW) |
| 04/06/07 | Discount of 10 percent invoked for Court Reporter Johnny Sanchez [06-20885] Transcript ddl updated to 4/18/07 for Johnny Sanchez. Ct. Reporter Discount Date updated to 4/18/07 for Johnny Sanchez. (DDK) |
| 04/24/07 | Transcript filed in district court by Court Reporter Johnny Sanchez on 4/16/07. [06-20885] Transcript ddl satisfied. Ct. Reporter Discount Date canceled. Supp. ROA due on 5/9/07. (AS) |
| 06/05/07 | Supplemental record on appeal filed. Supplement #: 3 Vol(s) of Paper Pleadings: 1 . [06-20885] (LBM) |

| **Filed** | **Docket Text** |
|---|---|
| 06/11/07 | 4th Supplemental record on appeal filed. SEALED: 1 Box (Volumes of electronic transcripts: 10). [06-20885] ROA ddl satisfied. (LBM) |
| 06/15/07 | Briefing notice resumed. [06-20885] A/Pet's Brief due on 7/25/07 for Jeffrey K Skilling. (DDK) |
| 06/21/07 | Phone extension confirmed for Appellant Jeffrey K Skilling for filing brief. Extension granted to and including 8/24/07. [06-20885] A/Pet's Brief ddl updated to 8/24/07 for Jeffrey K Skilling. (JMW) |
| 07/23/07 | Supplemental record on appeal filed. Supplement #: 5 Vol(s) of Electronic Pleadings: 25 Vol(s) of Electronic Transcripts: 2; SEALED: 1 box (Doc #s 591 and 618). [06-20885] (LBM) |
| 07/30/07 | Unopposed motion filed by Appellant Jeffrey K Skilling to extend time to file appellant(s) brief until 9/14/07 [5811781-1] Date of COS: 7/27/07 Sufficient [Y/N]: Y [06-20885] (JMW) |
| 07/31/07 | CLERK Order filed GRANTING unopposed motion to extend time to file Appellant's Brief [5811781-1] A/Pet's Brief ddl updated to 9/14/07 for Jeffrey K Skilling. Copies to all counsel. [06-20885] (LBM) |
| 08/14/07 | The attorney Mark C Holscher for Jeffrey K Skilling not participating in case. [06-20885] (JMW) |
| 08/29/07 | Supplemental record on appeal filed. Supplement #: 6 SEALED: 2 boxes (Appendices to Doc #618 and #1214-Juror Questionaire). [06-20885] (CNF) |
| 09/07/07 | Motion filed by Appellant Jeffrey K Skilling to file brief in excess of the word count, but not to exceed 59,000 words. [5842537-1] Date |

| Filed | Docket Text |
|---|---|
| | of COS: 9/7/07 Sufficient [Y/N]: Y [06-20885] (JMW) |
| 09/13/07 | Appearance form filed by Meaghan Elizabeth McLaine for Appellant Jeffrey K Skilling. [06-20885] ( No. of forms filed: 1) (CNF) |
| 09/17/07 | Motion filed by Appellant Jeffrey K Skilling to supplement the record on appeal with exhibits 1-26 [5849530-1], for the court to have the government submit the binders of FBI notes underlying the composite FBI form 302's created for witness Andrew Fastow (The Fastow Binders) [5849530-2] Response/Opposition due on 10/1/07. Date of COS: 9/14/07 Sufficient [Y/N]: Y [06-20885] (JMW) |
| 09/17/07 | COURT Order filed granting appellant's motion for leave to file a brief in excess of the word count, but not to exceed 58,922 words; THE SAME LEAVE IS GRANTED THE GOVERNMENT. [5842537-1] (PEH) Copies to all counsel. [06-20885] (CNF) |
| 09/17/07 | Appellant's Brief filed by Appellant Jeffrey K Skilling. Disk Provided [Y/N]: y Sufficient [Y/N]: y [5850428-1] [06-20885] A/Pet's Brief ddl satisfied. E/Res's Brief due on 10/17/07 for USA. (CNF) |
| 09/17/07 | Record excerpts filed by Appellant Jeffrey K Skilling. [06-20885] Sufficient Record Excerpts due on 9/27/07 for Jeffrey K Skilling; Motion in excess pages needed. (CNF) |
| 09/19/07 | Letter referencing record excerpts [5850763-1] by Appellant Jeffrey K Skilling filed by Appellant Jeffrey K Skilling advising that the excerpts consist of mandatory contents and do not contain any optional contents, therefore, not in excess pages [5851944-1] |

| Filed | Docket Text |
|---|---|
| | [06-20885] (SEND TO SCREENING JUDGE & PANEL) (JMW) |
| 09/19/07 | Record Excerpts made sufficient by Appellant Jeffrey K Skilling [06-20885] Sufficient Record Excerpts ddl satisfied. (JMW) |
| 09/26/07 | Unopposed motion filed by Natl assoc of Cr Def Lawyr to file amicus brief [5861314-1] Date of COS: 09/25/07 Sufficient [Y/N]: y [06-20885] (LFM) |
| 09/26/07 | Appearance form filed by John D Cline for Amicus Curiae Natl Assoc of Cr Def. [06-20885] (No. of forms filed: 1) (LFM) |
| 10/01/07 | Response/opposition filed by Appellee USA to motion to supplement the record [5849530-1] by Appellant Jeffrey K Skilling, motion for the court to have the government submit the binders of FBI notes underlying the composite FBI form 302's created for witness Andres Fastow (The Fastow Binders) [5849530-2] by Appellant Jeffrey K Skilling. Response/Opposition ddl satisfied. Reply to Resp/Opp due on 10/9/07. Date of COS: 9/28/07 Sufficient [Y/N]: Y [5860178- 1] [06-20885] (JMW) |
| 10/01/07 | Unopposed motion filed by Appellee USA to extend time to file appellee(s) brief until 11/13/07 [5860777-1] Date of COS: 9/28/07 Sufficient [Y/N]: Y [06-20885] (LBM) |
| 10/01/07 | CLERK Order filed GRANTING unopposed motion to extend time to file Appellee's Brief [5860777-1] E/Res's Brief ddl updated to 11/13/07 for USA. Copies to all counsel. [06-20885] (LBM) |
| 10/01/07 | CLERK Order filed granting unopposed motion of Natl Assoc of Cr Def Lawyr to file |

| Filed | Docket Text |
|---|---|
| | amicus brief [5861314-1] Copies to all counsel. [06-20885] (LFM) |
| 10/01/07 | Amicus curiae brief filed by Amicus Curiae Natl Assoc of Cr Def Consent included in brief? [Y/NA] NA Disk Provided [Y/N]: n Sufficient [Y/N]: y [5861369-1] [06-20885] (LFM) |
| 10/05/07 | Reply filed by Appellant Jeffrey K Skilling to response/opposition [5860178-1], motion to supplement the record [5849530-1], motion for extraordinary relief [5849530-2] Reply to Resp/Opp due ddl satisfied. Sufficient [Y/N]: y [5866630- 1] [06-20885] (CNF) |
| 10/15/07 | The attorney Brian C Devine for Jeffrey K Skilling not participating in case. [06- 20885] (JMW) |
| 11/01/07 | COURT Order filed GRANTING appellant's motion to supplement the record on appeal with exhbits 1 through 26 [5849530-1], GRANTING appellant's motion for the court to have the government submit the binders of FBI notes underlying the composite FBI form 302's created for witness Andrew Fastow (The Fastow Binders) [5849530-2] ( PEH) Copies to all counsel. [06-20885] (LBM) |
| 11/01/07 | Record on appeal filed. Exhibits: 1 box (Doc. #s 1-11, 16-26) SEALED: 1 envelope (Doc. #s 12, 13, 15). [06-20885] (LBM) |
| 11/14/07 | Appellee's Brief filed by Appellee USA. Disk Provided [Y/N]: Y Sufficient [Y/N]: Y [5896571-1] [06-20885] E/Res's Brief ddl satisfied. Reply Brief due on 11/28/07 for Jeffrey K Skilling. (CNF) |
| 11/15/07 | Unopposed motion filed by Appellant Jeffrey K Skilling to extend time to file reply brief until 12/21/07 [5896756-1], to file brief in excess of the word count limitation but not to |

| **Filed** | **Docket Text** |
|---|---|
| | exceed 29,000 words. [5896756-2] Date of COS: 11/14/07 Sufficient [Y/N]: Y [06-20885] (JMW) |
| 11/16/07 | Motion filed by Appellant Jeffrey K Skilling for clarification of Court's 11/1/07 order [5898275-1], to compel government to file "Fastow Binders" by 11/20/07. [5898275-2] Response/Opposition due on 12/3/07. Date of COS: 11/15/07 Sufficient [Y/N]: Y [06-20885] (CNF) |
| 11/20/07 | Response/opposition filed by Appellee USA to motion for clarification of order [5898275-1] by Appellant Jeffrey K Skilling, motion to compel [5898275-2] by Appellant Jeffrey K Skilling Response/Opposition ddl satisfied. Date of COS: 11/19/07 Sufficient [Y/N]: Y [5900554-1] [06-20885] (CNF) |
| 11/23/07 | Reply filed by Appellant Jeffrey K Skilling to response/opposition [5900554-1], motion for clarification of order [5898275-1], motion to compel [5898275-2] Sufficient [Y/N]: Y [5901682-1] [06-20885] (JMW) |
| 11/27/07 | COURT Order filed granting unopposed motion to extend time to file Reply Brief [5896756-1] until: 12/21/07 . Reply Brief ddl updated to 12/21/07 for Jeffrey K Skilling., granting unopposed motion to file brief in excess of the word count limitation but not to exceed 29,000 words. [5896756-2] (PEH) Copies to all counsel. [06-20885] (CB) |
| 11/28/07 | COURT Order filed granting motion for clarification of Court's order dated 11/1/07; [5898275-1], further granting motion to compel government to file "Fastow Binders subject to qualifications, etc. (IN DETAIL) [5898275-2] (PEH) Copies to all counsel. [06-20885] (CNF) |

| **Filed** | **Docket Text** |
|---|---|
| 11/29/07 | Motion filed by Appellee USA to vacate order of 11/28/07 to the extent that it directs the government to provide the raw notes to Skilling and his counsel. [5906618-1] Response/Opposition due on 12/13/07. Date of COS: 11/28/07 Sufficient [Y/N]: Y [06-20885] (DDK) |
| 11/30/07 | Response/opposition filed by Appellant Jeffrey K Skilling to motion to vacate order [5906618-1] by Appellee USA Response/Opposition ddl satisfied. Date of COS: 11/30/07 Sufficient [Y/N]: Y [5906669-1] [06-20885] (DDK) |
| 11/30/07 | Record on appeal filed. SEALED: 1 box (Fastow Binders). [06-20885] (CNF) |
| 12/03/07 | Reply filed by Appellee USA to response/opposition [5906669-1], motion to vacate order [5906618-1] Sufficient [Y/N]: Y [5907631-1] [06-20885] (CNF) |
| 12/05/07 | The attorney James Lee Turner for USA not participating in case. [06-20885] (JMW) |
| 12/20/07 | COURT Order filed DENYING appellee's motion to vacate the court's order of 11/28/07 (IN DETAIL) [5906618-1] (PEH, FPB, CES) Copies to all counsel. [06-20885] (LBM) |
| 12/24/07 | Motion filed by Appellant Jeffrey K Skilling to supplement the record on appeal with Exhibits A&B. [5925244-1] Response/Opposition due on 1/11/08. Date of COS: 12/21/07 Sufficient [Y/N]: Y [06-20885] (JMW) |
| 12/24/07 | Reply brief filed by Appellant Jeffrey K Skilling. Disk Provided [Y/N]: N Sufficient [Y/N]: Y [5925467-1] [06-20885] Reply Brief ddl satisfied. (CNF) |
| 12/28/07 | Record on appeal released to Thomas Bacon (Riverside). Exhibits: 1 box (filed 11/1/07). |

| **Filed** | **Docket Text** |
|---|---|
| | [06-20885] (RJd) |
| 01/02/08 | CLERK Order filed granting appellant's motion to supplement the record with exhibits A and B. [5925244-1] Copies to all counsel. [06-20885] (CNF) |
| 01/02/08 | Record on appeal filed. Exhibits: 1 box (Exhibits A & B). [06-20885] (CNF) |
| 01/09/08 | Record on appeal released to Thomas Bacon (Riverside). Exhibits: 1 box (11/1/07). [06-20885] (RJd) |
| 01/25/08 | Case tentatively calendared for oral argument Week of: 03/31/08. [06-20885] (GAM) |
| 01/31/08 | Motion filed by Appellant Jeffrey K Skilling for additional argument time of 120 total minutes [5951180-1], for court to authorize a court reporter to record and transcribe oral argument [5951180-2] Date of COS: 1/30/08 Sufficient [Y/N]: Y [06-20885] (SUBMIT TO OA PANEL) (JMW) |
| 02/19/08 | Supplemental authorities (FRAP 28(j)) filed by Appellant Jeffrey K Skilling. [5963931-1] [06-20885] (VLB) |
| 02/22/08 | Case calendared for oral argument. [06-20885] (VLB) |
| 02/27/08 | COURT Order filed denying appellant's motion to enlarge the time for argument. The court has already issued a calendar that provides for 30 minutes per side, one hour total. [5951180-1], granting that the request to have a court reporter present to transcribe the oral arugment. [5951180-2] Copies to all counsel. [06-20885] (VLB) |
| 02/29/08 | Supplemental authorities (FRAP 28(j)) filed by Appellant Jeffrey K Skilling. [5972278-1] [06-20885] (VLB) |

| **Filed** | **Docket Text** |
|---|---|
| 03/04/08 | Motion filed by Appellant Jeffrey K Skilling to file supplemental briefs. [5976818-1] Supplemental brief included? (Y/N): Y, to unseal A's suppl. brief [5976818-2] Date of COS: 3/3/08 Sufficient [Y/N]: Y [06-20885] (JMW) |
| 03/05/08 | Motion filed by Appellant Jeffrey K Skilling [5976825-1] to place supplemental brief under seal. Date of COS: 3/4/08 Sufficient [Y/N]: Y [06-20885] (JMW) |
| 03/05/08 | Response/opposition filed by Appellee USA to motion to file supplemental briefs [5976818-1] by Appellant Jeffrey K Skilling. Reply to Resp/Opp due on 3/14/08. Date of COS: 3/4/08 Sufficient [Y/N]: y [5976831-1] [06-20885] (JMW) |
| 03/07/08 | Reply filed by Appellant Jeffrey K Skilling to response/opposition [5976831-1], motion to file supplemental briefs [5976818-1] Reply to Resp/Opp due ddl satisfied., motion to unseal brief [5976818-2] Sufficient [Y/N]: Y [5978302-1] [06-20885] (JMW) |
| 03/14/08 | COURT Order filed GRANTING motion to place brief under seal [5976825-1], GRANTING motion to file supplemental briefs [5976818-1] E/Res Supplemental Brief due on 3/25/08 for USA., GRANTING motion to unseal brief for review only by (Skilling) and his counsel of record, including assistants working within the curtilage of attorney-client privilege. "...The government may file a reply, not to exceed 17,000 words, to the supplemental brief. The reply must be received in the Clerk's office by 1:00 p.m. on March 25, 2008. Because appellant was tardy in moving to file his supplemental brief, he is not permitted to file a response to the government's reply, and he is directed not to request leave to file such a |

| Filed | Docket Text |
|---|---|
| | response. Oral argument will not be continued or enlarged for any reason." [5976818-2] ( ) Copies to all counsel. [06-20885] (LBM) |
| 03/14/08 | Supplemental brief filed by Appellant Jeffrey K Skilling. Disk Provided [Y/N]: Y Sufficient [Y/N]: Y [5983772-1] [06-20885] (LBM) |
| 03/14/08 | Appendix to appellant's supplemental brief filed by Appellant Jeffrey K Skilling. [06-20885] (LBM) |
| 03/14/08 | The A(s) supplemental brief(s) filed 03/14/08 [5983772-1] by Appellant Jeffrey K Skilling is placed under seal. [06-20885] (CNF) |
| 03/14/08 | The appendix filed 03/14/08 [5983803-1] by Appellant Jeffrey K Skilling is placed under seal. [06-20885] (CNF) |
| 03/24/08 | Appearance form filed by David J Marroso for Appellant Jeffrey K Skilling. [06-20885] ( No. of forms filed: 1) (LBM) |
| 03/25/08 | Supplemental brief filed by Appellee USA Disk Provided [Y/N]: N Sufficient [Y/N]: Y [5990390-1] [06-20885] E/Res Supplemental Brief ddl satisfied. (LBM) |
| 03/26/08 | Supplemental authorities (FRAP 28(j)) filed by Appellant Jeffrey K Skilling. [5990442-1] [06-20885] (VLB) |
| 03/26/08 | Appendix to appellee's supplemental brief filed by Appellee USA [06-20885] (LBM) |
| 03/27/08 | Response/opposition filed by Appellee USA to r28(j) letter [5990442-1] by Appellant Jeffrey K Skilling Sufficient [Y/N]: y [5992089-1] [06-20885] (VLB) |
| 04/02/08 | Oral argument heard. Case argued by Daniel M Petrocelli for Appellant Jeffrey K Skilling, Joseph Douglas Wilson for Appellee USA [06-20885] (VLB) |

| Filed | Docket Text |
|---|---|
| 04/04/08 | Letter filed by Appellant Jeffrey K Skilling, dated 4/4/08. [5998819-1] [06-20885] (JMW) |
| 04/16/08 | Motion filed by James Cantillon Ross to file amicus brief [6006926-1] Date of COS: 4/4/08 Sufficient [Y/N]: Y [06-20885] (DDK) |
| 04/23/08 | COURT Order filed denying motion of James Cantillon Ross to file amicus brief [6006926-1] terminated party James Cantillon Ross. (Charles R Fulbruge III - Clerk of Court - ENTERED AT THE DIRECTION OF THE COURT). Copies to all counsel. [06-20885] (CNF) |
| 06/05/08 | Supplemental authorities (FRAP 28(j)) filed by Appellant Jeffrey K Skilling. [6043051-1] [06-20885] (LBM) |
| 06/25/08 | Supplemental authorities (FRAP 28(j)) filed by Appellant Jeffrey K Skilling. [6057845-1] [06-20885] (CNF) |
| 08/12/08 | Supplemental authorities (FRAP 28(j)) filed by Appellant Jeffrey K Skilling. [6092213-1] [06-20885] (CNF) |
| 09/26/08 | Supplemental authorities (FRAP 28(j)) filed by Appellant Jeffrey K Skilling. [6124146-1] [06-20885] (CNF) |
| 12/08/08 | Supplemental authorities (FRAP 28(j)) filed by Appellant Jeffrey K Skilling. [6172869-1] [06-20885] (CNF) |
| 01/06/09 | Opinion filed. Issd in T form? y Mandate pull date is 1/27/09. [06-20885] (JMA) |
| 01/06/09 | Judgment entered and filed. [06-20885] (JMA) |
| 01/13/09 | Unopposed motion filed by Appellant Jeffrey K Skilling to file oversize rehearing 25 pages [6195871-1]. Date of COS: 1/12/09 Sufficient |

| Filed | Docket Text |
|---|---|
| | [Y/N]: Y [06-20885] (DDK) |
| 01/14/09 | COURT Order filed granting unopposed motion to file oversize rehearing [6195871-1] (ECP) Copies to all counsel. [06-20885] (SAT) |
| 01/20/09 | Petition filed by Appellant Jeffrey K Skilling for rehearing. # of copies filed: 4 [6200490-1] Mandate pull date canceled. Date of COS: 1/20/09 Sufficient [Y/N]: Y [06-20885] (SBS) |
| 01/20/09 | Petition filed by Appellant Jeffrey K Skilling for rehearing en banc. # of copies filed: 20 [6200491-1] Date of COS: 01/20/09 Sufficient [Y/N]: Y [06-20885] (SBS) |
| 02/10/09 | COURT Order filed DENYING petition for rehearing [6200490-1], DENYING petition for rehearing en banc [6200491-1] With poll (Y/N)?: N Mandate pull date is 2/17/09. Copies to all counsel. [06-20885] (LBM) |
| 02/18/09 | MANDATE ISSUED. Mandate pull date satisfied. [06-20885] (LBM) |
| 05/19/09 | SUPREME COURT NOTICE that petition for writ of certiorari [6283328-2] was filed by Appellant Mr. Jeffrey K Skilling on 05/11/09. Supreme Court Number: 08-1394. [06-20885] (CAV) |
| 10/28/09 | SUPREME COURT ORDER received granting petition for writ of certiorari filed by Appellant Mr. Jeffrey K Skilling in 06-20885 on 10/13/09. [6396983-1] [06-20885] (CAV) |

## APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| UNITED STATES OF | ) | Crim. No. H-04-25 |
| AMERICA, | ) | |
| | ) | Violations: 15 |
| Plaintiff, | ) | U.S.C. §§ 78j(b), |
| | ) | 78m(a), 78m(b)(2) |
| v. | ) | and 78ff; 18 U.S.C. |
| | ) | §§ 371, 1014, 1343, |
| RICHARD A. CAUSEY, | ) | 1344, |
| JEFFREY K. | ) | 1956(a)(I)(A)(i), |
| SKILLING, and | ) | 1956(a)(1)(B)(i), |
| KENNETH LAY, | ) | 1956(h), 2, and |
| | ) | 3551 et seq.; 17 |
| Defendants. | ) | C.F.R. §§ 240.10b-5 |
| | ) | and 240.13b2-2. |

## SUPERSEDING INDICTMENT

The Grand Jury charges:

## INTRODUCTION

At all times relevant to this Indictment:

1. Enron Corp. ("Enron") was an Oregon corporation with its headquarters in Houston, Texas. Among other businesses, Enron was engaged in the purchase and sale of natural gas and power, construction and ownership of pipelines, power facilities and energy-related businesses, provision of

telecommunications services, and trading in contracts to buy and sell various commodities. Before it filed for bankruptcy on December 2, 2001, Enron was the seventh largest corporation in the United States.

2. Enron was a publicly traded company whose shares were listed on the New York Stock Exchange and were bought, held, and sold by individuals and entities throughout the United States and the world. Enron and its directors, officers, and employees were required to comply with regulations of the United States Securities and Exchange Commission ("SEC"). Those regulations protect members of the investing public by, among other things, requiring that a company's financial information is fully and accurately recorded and fairly presented to the public. The regulations require, among other things, that a company submit filings to the SEC in Washington, D.C. that include fair and accurate financial statements and management discussion and analysis of a company's business.

3. The price of Enron's stock was influenced by factors such as Enron's reported revenue, earnings, debt, cash flow, and credit rating, as well as its growth potential and consistent ability to meet revenue and earnings targets and forecasts. Enron executives provided guidance to the investing public regarding anticipated revenue, earnings for upcoming reporting periods, and other information regarding Enron's business activity. Such guidance was communicated in presentations and conference calls to securities analysts and in other public

statements by Enron executives. Relying in part on the company's guidance, securities analysts disseminated to the public their own estimates of the company's expected performance. These earnings estimates, or analysts' expectations, were closely followed by investors. Typically, if a company announced earnings that failed to meet or exceed analysts' expectations, the price of the company's stock declined.

4. It was also critical to Enron's ongoing business operations that it maintain an investment grade rating for its debt, which was rated by national credit rating agencies. An investment grade rating was essential to Enron's ability to enter into trading contracts with its counterparties and to maintain sufficient lines of credit with major banks. In order to maintain an investment grade rating, Enron executives were required to demonstrate that its financial condition was stable and that the risk that Enron would not repay its debts and other financial obligations was low. The credit rating agencies relied on, among other things, Enron's public filings, including its financial statements filed with the SEC, in rating Enron's debt. In addition, members of Enron's senior management spoke regularly with, and provided financial and other information to, representatives of credit rating agencies. Two primary factors influencing Enron's credit rating and the willingness of banks to extend loans to Enron were Enron's total amount of debt and other obligations and its cash flow.

## PRINCIPAL CONSPIRATORS AND THEIR ROLES AT ENRON

5. As detailed below, defendants KENNETH L. LAY ("LAY"), JEFFREY K. SKILLING ("SKILLING'), and RICHARD A. CAUSEY ("CAUSEY"), and their conspirators, engaged in a wide-ranging scheme to deceive the investing public, including Enron's shareholders, the SEC, and others (the "Victims"), about the true performance of Enron's businesses by:
(a) manipulating Enron's publicly reported financial results; and (b) making public statements and representations about Enron's financial performance and results that were false and misleading in that they did not fairly and accurately reflect Enron's actual financial condition and performance, and they omitted to disclose facts necessary to make those statements and representations fair and accurate.

6. LAY was named Chief Executive Officer ("CEO") and Chairman of the Board of Directors (the "Board") of Enron upon its formation in 1986. LAY held both of these positions until February 2001, when he stepped down as CEO and continued as Chairman, and SKILLING became the CEO. On August 14, 2001, SKILLING abruptly resigned from Enron and LAY resumed his position as Enron's CEO and remained Chairman.

7. SKILLING was employed by or acted as a consultant to Enron from at least the late 1980s through early December 2001. In August 1990, Enron hired SKILLING. SKILLING held various executive and management positions at Enron and in January 1997, Enron promoted SKILLING to President and Chief Operating Officer ("COO") of the company. SKILLING then reported directly to LAY.

In February 2001, SKILLING was named President and CEO of Enron. He resigned in August 2001.

8. CAUSEY was a certified public accountant and an employee of Enron from 1991 through early 2002. From 1986 to 1991, while employed by the accounting firm Arthur Andersen LLP ("Andersen"), CAUSEY provided audit services to Enron on behalf of Andersen, which served as Enron's outside auditor. In 1991, Enron hired CAUSEY as Assistant Controller of Enron Gas Services Group. From 1992 to 1997, CAUSEY served in various executive positions at Enron. In 1998, CAUSEY became Enron's Chief Accounting Officer ("CAO").

9. LAY, SKILLING, and CAUSEY oversaw the operations of Enron's numerous business units. As CEO, LAY and SKILLING were responsible for supervising the activities of each of Enron's business units and the heads of those business units, as well as the activities of the senior Enron managers who conducted the company's financial and accounting activities. LAY and SKILLING held weekly management meetings with the leaders of Enron's business units to review, among other things, the company's budget and operating performance.

10. LAY and SKILLING also routinely provided guidance and information concerning the company's performance to securities analysts, as well as to Enron's employees and the public. Indeed, LAY and SKILLING served as Enron's principal spokespersons with the investing public. LAY and

SKILLING reviewed and approved proposed press releases concerning Enron, and they signed Enron's annual reports filed on Form 10-K with the SEC. SKILLING signed Enron's quarterly and annual representation letters to its auditors.

11. As Chairman, LAY was responsible for presiding over meetings of the Board and assisting in developing the agenda for Board meetings. Among other things, the Board periodically reviewed Enron's operations, financial results, proposed transactions and executive compensation. LAY and SKILLING also attended meetings of the Board's committees, including the Finance Committee and the Audit and Compliance Committee. According to its charter, the Finance Committee served as a "monitor for the Company's financial activities" and reviewed and approved the company's significant financings, debt levels, and performance of portfolio assets, among other things.

12. As Enron's CAO, CAUSEY managed Enron's accounting practices. CAUSEY reported to LAY and SKILLING. Together with LAY, SKILLING, Enron's Chief Financial Officer ("CFO") Andrew S. Fastow, its Treasurer Ben F. Glisan, Jr., and others, CAUSEY was a principal manager of Enron's finances. CAUSEY was also a principal manager of Enron's disclosures and representations to the investing public. He routinely participated in discussions with securities analysts and in other communications in which Enron provided the public with guidance concerning the company's performance. CAUSEY signed Enron's annual reports filed with the SEC on Form 10-K and its

quarterly reports on Form 10-Q and he signed quarterly and annual representation letters to Enron's auditors.

13. LAY, SKILLING, and CAUSEY had numerous conspirators, including, but not limited to: Fastow, who supervised such matters as Enron's structured finance, cash flow, and debt management activities; Glisan, who also assisted in supervising Enron's structured finance, cash flow and debt management activities; David W. Delainey, the CEO of two Enron business units -- Enron North America ("ENA") and Enron Energy Services ("EES") -- who supervised large portions of Enron's wholesale energy business and, later, its retail energy business; Wesley Colwell, the CAO of ENA, who managed the accounting for Enron's wholesale energy business; Michael Kopper, a Managing Director in Enron's Global Finance group, who conducted structured finance activities for Enron and assisted in running important Enron off-balance sheet vehicles; as well as others.

## Defendants' Profit as a Result of the Scheme

14. LAY, SKILLING, CAUSEY and their conspirators enriched themselves as a result of the scheme through salary, bonuses, grants of stock and stock options, other profits, and prestige within their professions and communities.

15. Between 1998 and 2001, SKILLING received approximately $200 million from the sale of Enron stock options and restricted stock, netting

over $89 million in profit, and was paid more than $14 million in salary and bonuses.

16. Between 1998 and 2001, LAY received approximately $300 million from the sale of Enron stock options and restricted stock, netting over $217 million in profit, and was paid more than $19 million in salary and bonuses. During 2001 alone, LAY received a salary of over $1 million, a bonus of $7 million and $3.6 million in long term incentive payments. Additionally, during the period of August 21 through October 26, 2001, LAY sold approximately 918,104 shares of Enron stock to repay advances totaling $26,025,000 he had received from a line of credit extended to LAY by Enron.

17. Between 1998 and 2001, CAUSEY received more than $14 million from the sale of Enron stock and stock options, netting over $5 million in profit, and was paid more than $4 million in salary and bonuses.

## OVERVIEW OF THE DEFENDANTS' SCHEME TO DEFRAUD

18. LAY, SKILLING, and CAUSEY were among the principal operators of the scheme, which SKILLING spearheaded until his sudden departure in August 2001, at which point LAY took over leadership of the conspiracy. Due to the efforts of LAY, SKILLING, CAUSEY and their conspirators, the financial appearance of Enron presented to the investing public concealed the true state of Enron. Enron's publicly reported financial results and filings and its public descriptions of itself, including in public statements made by and with the

knowledge of LAY, SKILLING, and CAUSEY, did not truthfully present Enron's financial position, results from operations, and cash flow of the company and omitted facts necessary to make the disclosures and statements that were made truthful and not misleading. The misleading portrayal of Enron's financial condition supported Enron's stock price and its credit rating.

19. The conspiracy's objectives included:

- reporting recurring earnings that falsely appeared to grow smoothly by approximately 15 to 20 percent annually and thus create the illusion that Enron met or exceeded the published expectations of securities analysts forecasting Enron's reported earnings-per-share and other results;
- touting falsely the success of Enron's business units;
- concealing large losses, "write-downs," and other negative information concerning its business units;
- masking the true magnitude of debt and other obligations required to keep the company's varied and often unsuccessful business ventures afloat;
- deceiving credit rating agencies in order to maintain an investment-grade credit rating; and

- artificially inflating the share price of Enron's stock, including attempting to stem the decline of Enron's share price in 2001.

20. SKILLING and CAUSEY set and monitored annual and quarterly earnings and cash flow targets ("budget targets") for the company as a whole and for each of Enron's business units. SKILLING and CAUSEY set the budget targets by determining the numbers necessary for each Enron business unit to report in order to meet Enron's artificial mandates for growth and analysts' expectations, rather than by determining the earnings and cash flow that a particular business unit could be expected to generate. On a quarterly and year-end basis, they assessed Enron's progress toward its budget targets. When the budget targets were not met through actual results from business operations, the desired budget targets were achieved by conspirators through the use of various earnings and cash flow "levers" described in this Indictment. These levers were designed to manipulate Enron's finances and prop up its stock price by, among other things, filling earnings and cash flow shortfalls that were at times in the hundreds of millions of dollars. These shortfalls were referred to within Enron variously as the "gap," "stretch" or "overview."

21. For a significant time, the scheme to support artificially the share price of Enron's stock succeeded. In early 1998, Enron's stock traded at approximately $30 per share. By January 2001, even after a 1999 stock split, Enron's stock had risen to over $80 per share and Enron was ranked the

seventh-largest company in the United States, according to the leading index of the "Fortune 500." Until the scheme unraveled in late 2001, Enron maintained an investment grade credit rating.

## The Third and Fourth Quarters of 2001

22. On August 14, 2001, SKILLING resigned from Enron, according to SKILLING and LAY, for personal reasons. Enron's stock price, which had been declining since January 2001, fell sharply. LAY resumed his position as CEO of the company, intensified his oversight of Enron's day-to-day operations, and took control of the conspiracy. For a time, the conspirators were able to forestall even greater declines in the price of Enron stock by various levers, until mid-October when the scheme started to unravel and Enron ultimately filed for bankruptcy.

23. During the last two weeks of August 2001 and the first week of September 2001, LAY was briefed by numerous Enron employees on Enron's mounting and undisclosed financial and operational problems, including several billion dollars of losses embedded in Enron's assets and business units. As a result of these and other issues confronting Enron, LAY and CAUSEY privately considered a range of potential solutions, including mergers, restructurings, and even divestiture of Enron's pipelines, assets that LAY considered to be the crown jewels of the company.

24. Throughout the remainder of September 2001, LAY, CAUSEY and their

conspirators engaged in a series of high-level meetings to discuss the growing financial crisis at Enron and the likely impact on Enron's credit rating. Among other things, as LAY and CAUSEY knew, the total amount of losses embedded in Enron's assets and business units was, at a minimum, $7 billion. LAY and CAUSEY also learned that Enron's auditors had changed their position concerning the accounting treatment of four off-balance sheet vehicles called the Raptors, which required Enron to determine in short order whether an acceptable alternative methodology existed or whether, instead, Enron would have to restate its earnings and admit the error.

25. In the weeks leading up to Enron's third quarter earnings release on October 16, 2001, LAY and CAUSEY determined that Enron could not publicly report a loss in excess of $1 billion without triggering negative action by Enron's credit rating agencies. LAY and CAUSEY thus artificially capped Enron's losses at that amount, by among other things, manipulating accounting standards in order to conceal additional write-downs. On October 16, 2001, when Enron announced losses of approximately $1 billion, LAY and CAUSEY sought to minimize the import of the reported losses and continued to make false and misleading statements to the market about Enron's financial health.

26. From this juncture, the scheme rapidly unraveled. On October 22, 2001, Enron announced that it was the subject of an SEC investigation. By October 23, 2001, LAY had authorized Enron to enter into merger discussions with its far smaller

rival, Dynegy Inc. ("Dynegy"). On October 25, 2001, LAY authorized Enron to use the remaining $3 billion from its corporate lines of credit. On October 29 and November 1, 2001, the two leading credit rating agencies downgraded Enron's credit rating. On November 8, 2001, Enron announced its intention to restate its publicly reported financial statements for 1997 through 2000 and the first and second quarters of 2001 to reduce previously reported net income by an aggregate of $586 million The next day, Enron and Dynegy announced a merger agreement. On November 28, 2001, Enron's credit rating was further downgraded to "junk" status and Dynegy announced its withdrawal from the merger agreement. And on December 2, 2001, Enron filed for bankruptcy, making its stock, which less than a year earlier had been trading at over $80 per share, virtually worthless.

## DEVICES EMPLOYED IN FURTHERANCE OF SCHEME

27. At various times, LAY, SKILLING, and CAUSEY and their conspirators presented Enron's financial results, which had been engineered to appear far more successful than they actually were, in a false and misleading manner to the investing public through, among other things, conferences with securities analysts and rating agencies, press releases, media statements, and SEC filings.

28. LAY, SKILLING, and CAUSEY used and caused to be used secret oral side-deals, back-dated documents, disguised debt, material omissions, and outright false statements to further the scheme. Specifically, each at various times

during the conspiracy employed one or more of the following devices in furtherance of the fraudulent scheme:

- structuring financial transactions in a misleading manner in order to achieve earnings and cash flow objectives, avoid booking large losses in asset values, and conceal debt, including through the fraudulent use of purported third-party entities that in fact were not independent from Enron;

- manufacturing earnings and artificially improving Enron's balance sheet through fraudulent overvaluation of assets;

- fraudulently circumventing accounting standards applicable to the sale of financial assets in order to conceal the amount of Enron's debt and to create the false appearance of greater earnings and cash flow;

- concealing large losses and failures in Enron's two highly-touted new businesses, Enron Broadband Services ("EBS") and EES;

- manipulating earnings through fraudulent use of reserve accounts to mask volatility in Enron's wholesale energy trading earnings and use those reserves later in order to appear to achieve budget targets;

- fraudulently circumventing accounting standards applicable to the disclosure and recognition of impairments to goodwill; and
- making false and misleading statements, and omissions of facts necessary to make statements not misleading, about Enron's financial condition.

### A. Use of Special Purpose Entities and LJM Partnership to Manipulate Financial Results

29. Special Purpose Entities: With SKILLING's and CAUSEY's approval, conspirators created and used Special Purpose Entities ("SPEs") to ensure that Enron met financial reporting targets. SPEs were used to achieve "off-balance-sheet" accounting treatment of assets and business activities so that Enron could present itself more attractively as measured by criteria favored by securities analysts, credit rating agencies, and others. Under applicable accounting rules, an SPE could be considered separate from Enron if the SPE included at least a 3%, at risk, equity investment from a true third party that was not under Enron's control. If these conditions were satisfied, Enron could record the earnings and cash flow from a deal with the SPE, but would not have to record liabilities such as the SPE's debt on its own balance sheet.

30. Creation of LJM Partnership: In June 1999, in order to have a purportedly independent third party available to provide this outside equity funding so that Enron could more easily create and use SPEs to achieve its desired financial reporting results, SKILLING and CAUSEY sought and obtained the approval of the Board for Fastow to create and serve as the managing partner of an investment partnership named LJM Cayman, L.P., that would invest in SPEs with Enron. The Board later approved Fastow's participation in an even larger entity used to fund SPEs by Enron, LJM2 (the LJM entities are collectively referred to as "LJM"). LJM's business activity principally involved transactions with Enron and Enron affiliates.

31. As SKILLING and CAUSEY knew, LJM was not a true third party acting independently from Enron. Instead, LJM was controlled by Fastow acting simultaneously in his capacity both as Enron's CFO and as the general partner in LJM. SKILLING, CAUSEY and Fastow then exploited this dual role as a means to ensure that LJM did not act as a true third party investor, but rather as Enron's surrogate to achieve its financial reporting objectives and as a means for Fastow and others to be heavily compensated for contributing to the appearance of Enron's success.

32. From approximately July 1999 through October 2001, SKILLING and CAUSEY caused Enron to enter into a series of transactions with LJM that defrauded the Victims. The transactions with LJM enabled the conspirators, among other

things: (a) to manipulate Enron's reported financial results by fraudulently omitting poorly performing assets from Enron's balance sheet, when in fact such off-balance-sheet treatment was improper; (b) to conceal Enron's poor operating performance by engaging in transactions designed to close gaps between Enron's actual business results and its stated financial reporting goals; (c) to manufacture earnings through sham transactions when Enron was having trouble meeting its goals for a quarter or year; and (d) to inflate improperly the value of Enron's investment portfolio by backdating documents.

33. "Raptor" Hedges: Beginning in the spring of 2000, Enron and LJM engaged in a series of financial transactions called Raptor I, Raptor II, Raptor III and Raptor IV (collectively referred to as the "Raptors"). SKILLING and CAUSEY used the Raptors to manipulate fraudulently Enron's reported financial results. They designed and approved Raptor I to protect Enron from having to report publicly decreases in value in large portions of its merchant asset portfolio and investments by hedging their value with an allegedly independent SPE created by Enron and LJM, known as Talon.

34. As SKILLING and CAUSEY knew, however, the Raptor I structure could not properly be excluded from Enron's financial statements, because Talon was not independent from Enron, and LJM's investment in Talon was not sufficiently at risk to qualify as outside equity. With SKILLING's approval, CAUSEY and Fastow entered into a secret oral side-deal that LJM would receive its $30 million

investment back plus a substantial profit, prior to Talon engaging in any of the transactions for which it was created. In return, Enron could use Raptor I to manipulate Enron's balance sheet, including by allowing Enron, without negotiation or due diligence on behalf of LJM, to select the values at which the Enron assets were hedged with Talon.

35. In order to conceal the true reason for the payment from Enron to LJM, CAUSEY satisfied the oral side-deal by causing the manufacture of a separate transaction between Enron and Talon that had no legitimate business purpose and was undertaken solely to generate a $41 million payment to LJM. After providing LJM with this payment, Enron used Raptor I to hedge the value of Enron's assets. CAUSEY further used Raptor I fraudulently to promote Enron's financial position by back-dating a hedge of Avici stock — a company in which Enron held a significant stock position — to a date prior to the significant decline of the Avici stock price. With SKILLING's and CAUSEY's knowledge and approval, the basic structure used in Raptor I, including the secret oral side-deal, was repeated in Raptors II, III and IV.

36. Manufacturing Earnings and Concealing Debt through Purported Sales to LJM: SKILLING and CAUSEY used LJM to enter into other transactions in order to achieve purported asset sales to generate earnings and cash flow and move poorly performing assets off Enron's balance sheet. SKILLING and CAUSEY made secret side-deals that guaranteed LJM against equity risk in various transactions with Enron.

37. Cuiaba. One such transaction involved LJM's "purchase" of Enron's interest in a company that was building a power plant in Cuiaba, Brazil (the "Cuiaba project"). On or about September 30, 1999, when no true third-party buyer could be found, Enron "sold" a portion of its interest in the Cuiaba project to LJM. LJM agreed to "buy" this interest only because, as SKILLING knew, CAUSEY in a secret side-deal agreed that Enron would buy back the interest, if necessary, at a profit to LJM. Based on this purported sale, which was known amongst various conspirators as a "parking" or "warehousing" arrangement, Enron recognized approximately $65 million in income in the third and fourth quarters of 1999, when it was straining to meet budget targets.

38. By 2001, the Cuiaba project was approximately $200 million over budget. Nonetheless, in the spring of 2001, SKILLING and CAUSEY caused Enron to buy back LJM's interest in the Cuiaba project at a considerable profit to LJM, in fulfillment of the side-deal. So as to conceal the role of Fastow and LJM in the Cuiaba repurchase, SKILLING and CAUSEY decided not to announce the deal until Fastow sold his interest in LJM. Consequently, they caused Enron improperly to fail to disclose in its second quarter 2001 financial report the agreement to repurchase. The Cuiaba repurchase was effectuated just weeks after the second quarter report.

39. Nigerian Barges. In the fourth quarter 1999, SKILLING and CAUSEY pushed through several end-of-the-year transactions that were

designed solely to achieve budget targets at a time when Enron was struggling to produce earnings sufficient to ensure that Enron met analysts' expectations and Enron's predictions for earnings growth. One such transaction was a "sale" by Enron to Merrill Lynch & Co. ("Merrill Lynch") of an interest in electricity-generating power barges moored off the coast of Nigeria. When Enron was unable to find a true buyer for the barges by December 1999, conspirators parked the barges with Merrill Lynch so that Enron could record $12 million in earnings and $28 million in cash flow needed to meet 1999 budget targets.

40. As SKILLING and CAUSEY knew, Merrill Lynch entered into the Nigerian barges transaction based on a promise in a secret oral side-deal that Merrill Lynch would receive a return of its investment plus an agreed-upon profit within six months. As SKILLING and CAUSEY knew, the oral side-deal was concealed from Enron's auditors and the public. Because of the side-deal, Merrill Lynch's supposed equity investment was not sufficiently "at risk" under accounting rules to allow Enron to treat the transaction as a sale from which it could record earnings and cash flow. In June 2000, as SKILLING and`CAUSEY knew, conspirators caused Enron to deliver on the side-deal to Merrill Lynch by producing LJM as a buyer for the Nigerian barges, while secretly promising to take LJM out of the Nigerian barge deal at a profit plus a large fee.

41. Coyote Springs II. In or about March 2000, Avista Power, LLC ("Avista") agreed to purchase for approximately $59.5 million a portion of

Enron's interests in a turbine, land, and a facility construction contract (collectively referred to as "Coyote Springs II"). In order to recognize earnings immediately with respect to the turbine sale, Enron personnel sought to sell the turbine separately from the remainder of the package. However, Enron's auditors required a two-week separation between the sale of the turbine and the sale of the land and contract interests, in order to demonstrate that the sales were independent of each other. Avista, however, sought to buy the whole package and was concerned about the risk that it would purchase the turbine, and then not be able two weeks later to effectuate the purchase of the remainder of the package. To satisfy Avista, Enron personnel arranged for a contract (referred to as a "put") permitting Avista to require a third party to buy the turbine from Avista if, at the end of the requisite two-week period, the remainder of the sale did not go through.

42. On or about July 7, 2000, Enron and Avista entered into the agreement for Avista to purchase the turbine interest. As CAUSEY knew, LJM and Avista simultaneously entered into a put option agreement, which Enron personnel hid from Enron's auditors, in which Avista agreed to pay LJM approximately $3.54 million for an option to require LJM to purchase the turbine interest. Also on or about July 7, Enron paid LJM approximately $3.54 million for the put premium. As CAUSEY knew, LJM and Enron executives agreed in a side-deal that LJM would refund $3.192 million of the put premium once the put expired unexercised at the end of the two-week period. As CAUSEY also knew,

the put agreement between Avista and LJM, and the agreement between Enron and LJM to refund part of the put payment, were improperly hidden from Enron's auditors and the public.

43. Global Galactic. By approximately July 2000, a range of secret side-deals were pending between Enron and LJM. As a result, in or about and between July 2000 and September 2000, CAUSEY and Fastow resolved on a comprehensive basis the timing and means of fulfilling the illegal side-deals. The agreement was then memorialized in writing and initialed by CAUSEY and Fastow, and was termed by them the "Global Galactic" agreement. Among other things, CAUSEY and Fastow reaffirmed the side-deals between Enron and LJM concerning the Nigerian barges and Cuiaba. In addition, CAUSEY and Fastow agreed that the "put" in Raptor I would be backdated to August 3, 2000, and that of the $41 million to be paid by Enron to LJM as part of the Raptor I deal, approximately $6 million would be "re-invested" by LJM in a Raptor vehicle in order to appear to increase the vehicle's alleged outside equity. Approximately $3.1 million of this $6 million "investment" constituted the secret agreed-upon Coyote Springs II refund from LJM to Enron. CAUSEY disguised the Coyote Springs II refund as part of the supposed $6 million LJM "investment" in the Raptor vehicle so as to conceal the improper Coyote Springs II side-deal.

## B. Manufacturing Earnings by Fraudulently Manipulating Asset Values

44. CAUSEY generated earnings needed to meet targets by artificially increasing the book value of certain assets in Enron's portfolio. This portfolio included interests in many energy-related businesses that were not publicly traded and, therefore, were valued by Enron according to its own internal valuation models. CAUSEY manipulated these models in order to produce results desired to meet earnings targets. For example, in the fourth quarter of 2000, CAUSEY caused Enron fraudulently to increase the value of one of Enron's largest assets, Mariner Energy, by $100 million in order to help close a budget shortfall.

## C. Fraudulently Circumventing Accounting Standards Regarding Sale of Financial Assets

45. CAUSEY caused Enron to circumvent fraudulently accounting standards with respect to the sale of financial assets. Under Financial Accounting Standards 125 and 140, Enron "sold" assets to various SPEs it had established with various financial institutions ("FAS transactions"). Through FAS transactions, CAUSEY caused Enron to remove assets from its balance sheet and generate income and cash flow, while at the same time Enron retained control over the assets. From 1999 through 2001, Enron used FAS transactions to keep more than $1 billion of debt off its balance sheets and generate more than $350 million in earnings and cash flow.

46. As CAUSEY knew, Enron executives provided the Canadian Imperial Bank of Commerce ("CIBC") with a secret oral promise that it would not lose its three percent purported equity in a vehicle known as "Hawaii 125-0," which was used by Enron repeatedly to move assets off-balance sheet and record earnings. As CAUSEY knew, this oral commitment violated the accounting rules because CIBC's "equity" was not sufficiently at risk to qualify the vehicle as separate from Enron.

### D. Concealing EES Failures

47. In presentations to the investing public, LAY, SKILLING, and CAUSEY at various times during the conspiracy emphasized the performance and potential of EES as a major reason for past and projected increases in the value of Enron's stock. In order to enable EES to appear successful, conspirators concealed EES' massive losses by fraudulently manipulating Enron's "business segment reporting."

48. As LAY, SKILLING, and CAUSEY knew, in the first quarter of 2001, Enron executives manipulated EES's financial position through a reorganization designed to conceal the existence and magnitude of EES's business failure. Large portions of EES's business — which otherwise would have to report hundreds of millions of dollars in losses — were moved into another Enron business unit, Enron Wholesale. Enron Wholesale was capable of hiding these losses because it housed most of the company's wholesale energy trading profits. In spite of their knowledge of this maneuver, at various times LAY,

SKILLING, and CAUSEY claimed publicly that EES was continuing to perform successfully and as expected.

## E. Promoting EBS to Manufacture Earnings and Concealing Failure of EBS

49. "Rollout" of EBS: Beginning in 1999, SKILLING sought artificially to support and inflate Enron's stock price by falsely claiming that Enron's earnings and future prospects were supported to a substantial extent by its telecommunications business unit, EBS. At that time, stocks of technology sector companies, commonly known as "dot-corns," generally traded at a significant premium on public securities markets. A centerpiece of this strategy to promote EBS as a major factor in Enron's earnings and share value was a dramatic presentation by SKILLING and other Enron executives about EBS on January 20, 2000, to securities analysts.

50. "Project Grayhawk": Knowing that the January 20, 2000, conference was designed to, and likely would, cause an immediate increase in Enron's stock price, SKILLING and CAUSEY approved a scheme to allow Enron to record and report as earnings from operations $85 million of what in reality was just the increase in Enron's share price caused by the conference. Enron recorded earnings from a partnership interest it held in a vehicle named JEDI, which held Enron stock. Thus, when Enron's stock price rose, the value of JEDI rose. JEDI had hedged its Enron stock through a transaction that fixed the value of its Enron stock at

a set price. Just before the January 20, 2000 conference, in a project known as "Grayhawk," as SKILLING and CAUSEY knew, Enron executives temporarily removed the fixed hedge and replaced it with one that did not limit the upside gain to JEDI from increases in the value of Enron stock. After the conference, the fixed hedge was then reinstated at Enron's new higher share price. The purpose and effect of temporarily removing the fixed hedge was to enable Enron to capture and record as earnings the increased value of JEDI from the dramatic increase in Enron's stock price as a result of its January 20, 2000, analyst conference. SKILLING and CAUSEY caused Enron to report improperly and describe publicly this gain as recurring operating income in its energy business. Enron did not disclose to the investing public the manipulative manner in which income had been recognized from the appreciation of its own stock.

51. January 20, 2000, Analyst Conference: At the January 20, 2000, conference, SKILLING knowingly made false and misleading statements about EBS. SKILLING stated, among other things, that: EBS "has already established the superior broadband delivery network"; EBS has "built this network . . . and we are turning on the switch"; the critical "network control software" was in Enron's possession and incorporated and used in its network; and Enron valued the business at $30 billion, which SKILLING called a "conservative" valuation. In fact, EBS had neither the claimed broadband network in place, nor the critical proprietary network control software to run it. The claims about EBS remained only unproven concepts and laboratory

demonstrations that SKILLING was advised would take years to complete and might never be realized. In addition, as SKILLING knew, the valuation of the business was inflated by billions of dollars over what internal and external valuations determined might be supportable.

52. First Quarter 2000 Earnings: The plan to boost Enron's stock price by aggressively touting EBS and to record earnings from that boost succeeded. On January 11, 2000, the date on which Enron executives removed the hedge on the Enron stock in JEDI as part of "Project Grayhawk," Enron stock traded at approximately $47 per share. After the conference on January 20, 2000, Enron stock rose to approximately $67 per share. The "Project Grayhawk" maneuver allowed Enron to recognize, through JEDI, approximately $85 million in earnings as a result of the manufactured bounce in the stock from the false and misleading presentation to analysts about EBS.

53. Concealment of EBS Failure: By late 2000, SKILLING and CAUSEY knew that EBS was a struggling business that was losing far larger than expected amounts of money. They took steps to ensure that EBS's public financial results did not reflect the extent of its problems. For example, during 2000, as SKILLING and CAUSEY knew, conspirators authorized misleading, one-time, fmancial transactions, known as Project Braveheart and Backbone Trust, which manufactured earnings that Enron executives used to create the false impression that EBS would generate operating profits. Even with these transactions, EBS still faced

larger than expected losses during the first quarter 2001. In order to ensure that EBS did not record losses that exceeded Enron's annual budgeted loss target for EBS, and in order to ensure that the quarterly budgeted loss target for the first quarter 2001 was met, CAUSEY reduced EBS's expenses and costs for the first quarter of 2001 by shifting numerous EBS costs off EBS's books, changing the depreciable life of certain of EBS' assets from five to 10 years, and halving the bonus accrual for EBS employees.

## F. Manipulating Reported Earnings Through Improper Use of Reserves

54. Second Quarter 2000: In mid-July 2000, well after the second quarter 2000 reporting period was supposed to be closed, SKILLING and CAUSEY executed a plan artificially to support and inflate Enron's share price by fraudulently reporting an earnings-per-share figure of 34 cents, as opposed to the 32 cents per share that analysts predicted Enron would report. SKILLING and CAUSEY were aware that Enron's performance for the second quarter did not support an earnings-per-share figure of 34 cents, even after they used earnings levers and manipulated Enron's budget targets.

55. In order to achieve the target that SKILLING and CAUSEY sought to report publicly, a conspirator improperly released into earnings millions of dollars from a reserve account in Enron's energy trading business. The release of millions of dollars from the reserve account had no

legitimate business purpose and was done solely to accomplish SKILLING's and CAUSEY's aim to report publicly higher earnings per share than Enron actually achieved.

56. Third Quarter 2000 through Third Quarter 2001: SKILLING and CAUSEY fraudulently reserved trading profits in accounts maintained on an internal Enron ledger designated as "Schedule C." By early 2001, "Schedule C" reserves contained over $1 billion in unreported earnings. These reserves came principally from Enron's wholesale energy trading business, the profits of which had dramatically increased for reasons including rapidly rising energy prices in the western United States, especially in California. If disclosed to the public, the sudden and large increase in trading profits would have made it apparent that the revenues were closely tied to the market price for energy, and that Enron therefore was exposed to the risk of a decline in such prices. Such disclosure would have undermined Enron's presentation of itself as an "intermediator" in the energy markets, rather than as a speculative (and therefore risky) trading company, the stock of which would trade at a much lower price-to-earnings multiple.

57. SKILLING and CAUSEY fraudulently used funds that had been improperly placed in the "Schedule C" reserve accounts to avoid reporting large losses in other areas of Enron's business. In the first quarter of 2001, SKILLING and CAUSEY improperly used hundreds of millions of dollars of "Schedule C" reserves to conceal from the investing

public hundreds of millions of dollars in losses within Enron's EES business unit.

### G. Fraudulently Circumventing Accounting Standards Regarding Goodwill Impairment

58. In the third quarter of 2001, LAY and CAUSEY fraudulently circumvented the accounting standards with respect to "goodwill." The goodwill value of a company is generally the difference between the cost of an acquired entity and the recorded value of the entity's net assets. In or about June 2001, a new accounting rule, known as FAS 142, eliminated the ability to amortize goodwill impairments over a 40-year span, effective January 2002. LAY and CAUSEY undertook to determine the impact of the new goodwill rule on Enron for the purpose of disclosing in Enron's third quarter 2001 results that the rule would not adversely effect Enron's financial results.

59. Enron owned direct and indirect interests in Wessex Water Services ("Wessex"), a United Kingdom-based water company that Enron had purchased in 1998 as part of a strategic initiative to establish a large international water business called Azurix. By October 2000, Enron executives, including LAY and CAUSEY, recognized that Enron's water growth strategy had failed. In early 2001, Enron announced that the water business was not one of its "core businesses" and began the process of selling water-related assets. In the third quarter of 2001, as LAY and CAUSEY knew, Enron's internal accountants had determined that the amount of goodwill attributable to Wessex

was approximately $700 million. As LAY and CAUSEY also knew, Enron's internal accountants also determined that Enron would have to disclose the impact on Enron of a Wessex goodwill impairment unless Enron was able to assert that the company would once again pursue a water growth strategy backed by Enron. Enron's internal accountants estimated that pursuing such a strategy would require Enron to expend between $1.5 and $28 billion.

60. LAY and CAUSEY knew that Enron did not intend to pursue a water growth strategy and that Enron did not have the capital needed to support such a strategy. LAY and CAUSEY also knew that the credit rating agencies would view an announced impairment as a reason to reevaluate Enron's precarious credit rating. Nevertheless, in October 2001, in order to avoid disclosing to the investing public, the credit rating agencies, and the SEC the impact on Enron of any goodwill impairment associated with Wessex, LAY and CAUSEY falsely claimed to Enron's auditors that Enron was committed to developing a water growth strategy. LAY and CAUSEY then failed to disclose to the market the impact on Enron of an impairment of Wessex goodwill, when they purported to disclose the impact on Enron of all goodwill impairment that had been reviewed by Enron and its auditors.

## H. False and Misleading Representations to Investing Public, SEC, and Rating Agencies

61. At various time during the conspiracy, LAY, SKILLING, and CAUSEY presented knowingly

false and misleading statements and made material omissions about Enron's financial results, the performance of its businesses, and the manner in which its stock should be valued. These statements and material omissions were disseminated to the investing public in conferences, telephone calls, press releases, interviews, statements to the media and rating agencies, and SEC filings. They included, but were not limited to, those described in paragraphs 62 through 86 below

62. False and Misleading Statements in Public Filings. In furtherance of the scheme to manipulate Enron's financial results and inflate its stock price, SKILLING and CAUSEY filed and caused to be filed with the SEC false annual 10-K reports for the years ending December 31, 1999 and December 31, 2000, and false quarterly 10-Q reports for the quarters ending September 30, 1999, March 31, 2000, June 30, 2000, September 30, 2000, March 31, 2001 and June 30, 2001. Among other things, those filings contained materially false and misleading financial statements that misstated Enron's actual revenues and earnings and understated Enron's actual debt and expenses and contained materially false and misleading management descriptions and analysis of Enron's business, and they omitted to disclose facts necessary in order to make the disclosures made, in light of the circumstances under which they were made, not misleading.

63. First Quarter 2000 Analyst Call. On April 12, 2000, Enron held its quarterly conference call to discuss its earnings for the first quarter of

2000. SKILLING and CAUSEY prepared for and participated in the call. SKILLING stated that Enron's wholesale energy "assets and investments" business recorded earnings of $220 million for the quarter; that those earnings were "attributable to increased earnings from Enron's portfolio of energy-related and other investments"; that "this was a pretty good quarter for the energy-related investment business in contrast to the drag it was over the last year"; and that the upswing in earnings in that portion of Enron's business was "basically the performance of the existing asset portfolios." SKILLING omitted to disclose that, in fact approximately $85 million of the $220 million in earnings were unrelated to the operating performance of Enron's energy business. Rather, as SKILLING and CAUSEY knew, through "Project Grayhawk," they were solely attributable to a scheme to generate earnings by manufacturing an increase in Enron's own stock price.

64. Fourth Quarter 2000 Analyst Call. On January 22, 2001, Enron held its quarterly conference call with securities analysts to discuss its earnings for the fourth quarter of 2000. SKILLING and CAUSEY prepared for and participated in the call. SKILLING stated that "for Enron, the situation in California had little impact on fourth quarter results. Let me repeat that. For Enron, the situation in California had little impact on fourth quarter results." He further stated that "nothing can happen in California that would jeopardize" Enron's earnings targets for 2001 and that California business was "small" for Enron. In fact, as SKILLING and CAUSEY knew, Enron reaped huge

profits in 2000 from energy trading in California and concealed hundreds of millions of dollars of those earnings in undisclosed reserve accounts. As SKILLING and CAUSEY also knew, by late January 2001, California utilities owed EES hundreds of millions of dollars that EES could not collect, and Enron personnel had concealed large reserves that Enron was forced to use to offset those uncollectible receivables within Enron Wholesale's books.

65. In support of SKILLING's claims that EBS continued to be successful and a major positive factor contributing to Enron's stock price, a conspirator misled analysts during the call about the source of EBS's earnings in the fourth quarter of 2000. After being directed by SKILLING to answer a question about the source of EBS's revenues, the conspirator said that one-time, nonrecurring transactions such as sales of "dark fiber" and part of EBS's nascent video-on-demand venture with the Blockbuster company accounted for "a fairly small amount" of EBS's revenues. In fact, as SKILLING and CAUSEY knew, the sale of projected future revenues from the Blockbuster video-on-demand venture accounted for $53 million of EBS's fourth quarter 2000 revenues of $63 million.

66. January 25, 2001 Analyst Conference. Enron held its annual conference in Houston with securities analysts on January 25, 2001. SKILLING claimed that all of Enron's major businesses, including EBS and EES, were "strong franchises with sustainable high earnings power." With regard to EBS, he said that "Our network's in place. We

have customers and specific products and [devices] for the marketplace." He asserted that Enron's stock, which was then trading at over $80 per share, should be valued at $126 per share, attributing $63 of that alleged stock value to EBS and EES. He also stated that Enron was "not a trading business."

67. In fact, as SKILLING knew, EBS was performing poorly and had made little commercial progress in 2000; EBS personnel had recommended shutting down or selling EBS's network; EBS had few revenue prospects for the upcoming year; and EBS had an unsupportable cost structure that, without correction, could lead to substantial losses well in excess of those Enron had publicly forecast. As SKILLING also knew, EES too was a struggling business. EES was owed hundreds of millions of dollars in receivables by California utilities that it could not collect and that Enron personnel were concealing within Enron Wholesale. As SKILLING knew, these uncollected receivables were in part the result of a lack of internal controls and poor risk management within EES.

68. March 23, 2001 Analyst Call. Enron held a special conference call with securities analysts on March 23, 2001 in an effort to dispel growing public concerns about Enron's stock, which had fallen from over $80 per share to under $60 per share in less than two months. SKILLING and CAUSEY prepared for and participated in the call. SKILLING stated that "Enron's business is in great shape" and "I know this is a bad stock market but Enron's in good shape," even though, as SKILLING and CAUSEY knew, both of Enron's showpiece new

businesses, EBS and EES, were failing. SKILLING stated that Enron was "highly confident" of its income target of $225 million for the year for EES and that EES was seeing the "positive effect" of "the chaos that's going on out in California." In fact, as SKILLING and CAUSEY knew, EES's existing contracts were overvalued by hundreds of millions of dollars. EES was owed hundreds of millions of dollars by the California utilities that it could not collect and Enron personnel had concealed. EES's new management privately was predicting that it would take a year or more for EES to become truly profitable.

69. SKILLING further stated that EBS "is coming along just fine" and that the company was "very comfortable with the volumes and targets and the benchmarks that we set for EBS." He said that EBS's two profit-and-loss centers, intermediation and content services, were "growing fast" and that EBS was not laying off employees but rather "moving people around inside EBS" and that this was "very good news." In fact, as SKILLING knew, EBS was continuing to fail. Senior personnel at EBS privately had reported that the unit had an unsupportable cost structure and unproven revenue model. One senior EBS executive estimated that Enron would need to record as a loss approximately half of EBS's $875 million book value. EBS was laying off employees and SKILLING had told employees based in Portland, Oregon that EBS would be centralized in Houston and jobs would be cut because of a "total meltdown" in the broadband industry.

70. First Quarter 2001 Analyst Call. Enron held its conference call with securities analysts to discuss its first quarter 2001 results on April 17, 2001. SKILLING and CAUSEY prepared for and participated in the call. SKILLING talked about continued "big, big numbers" in EES's energy contracting business. He falsely explained Enron's movement of EES's energy contract portfolio into Enron Wholesale by omitting any reference to EES's large losses or their transfer to Enron Wholesale and stating, "[W]e have such capability in our wholesale business that we were -- we just weren't taking advantage of that in managing our portfolio at the retail side. And this retail portfolio has gotten so big so fast that we needed to get the best -- the best hands working risk management there." While Enron reported modest first quarter earnings for EES of $40 million, in fact, as SKILLING and CAUSEY knew, EES was facing losses approaching one billion dollars, including overvalued contracts, uncollectible receivables with the California utilities, and huge costs from an increased California regulatory surcharge.

71. SKILLING also stated regarding EBS that "[o]ur network is now substantially complete" and that it "is just not the case" that Enron was reducing staff of EBS because it was getting out of the content services business. SKILLING stressed that the reported losses in the unit were on target and "anticipated" and that the unit's capital expenditures were being reduced because it was "able to get access to connectivity without having to build it." In fact, as SKILLING knew, the cost-cutting measures at EBS were instituted because the

business was continuing to fail and to lay off employees rather than redeploy them, and was incurring much larger than expected losses that could not be offset with projected future revenues.

72. Second Quarter 2001 Analyst Call. Enron held its conference call with securities analysts to discuss its second quarter 2001 results on July 12, 2001. SKILLING and CAUSEY prepared for and participated in the call. SKILLING stated that Enron had a "great quarter" and that EES "had an outstanding second quarter" and was "firmly on track to achieve our 2001 target of $225 million" in earnings; that losses in EBS were due to "industry conditions" and "dried up" revenue opportunities; and that Enron's "new businesses are expanding and adding to our earnings power and valuation, and we are well positioned for future growth."

73. In fact, as SKILLING knew, by the close of the second quarter of 2001, EBS had failed and its increased losses were because it had stopped the one-time sales of portions of its business that had previously been the only significant source of its earnings. EES was facing hundreds of millions of dollars in concealed losses and was a year or more away from any prospect of success.

74. September 26, 2001 Employee On-Line Forum. On September 26, 2001, LAY held an on-line forum with Enron employees. LAY stated that "[t]he third quarter is looking great. We will hit our numbers. We are continuing to have strong growth in our businesses, and at this time I think we're positioned for a very strong fourth quarter." He

added that "we have record operating and financial results" and that "the balance sheet is strong." In fact, as LAY knew, Enron was preparing to announce a significant overall quarterly loss for the first time since 1997, and had committed a $1.2 billion accounting error, among other problems facing the company. In addition, LAY knew that the balance sheet reflected approximately $7 billion in embedded losses in business units and overvalued investments and that Enron had been exploring such drastic solutions to Enron's financial problems as a merger with another company and the sale of Enron's pipelines.

75. LAY announced to the employees, "I have strongly encouraged our 16b [management] officers to buy additional Enron stock. Some, including myself, have done so over the last couple of months and others will probably do so in the future. . . . My personal belief is that Enron stock is an incredible bargain at current prices." LAY deliberately created the impression with Enron employees that his confidence in Enron's stock was such that he had increased his personal ownership of Enron stock in the past two months. In fact, as LAY knew, during the prior "couple of months," LAY had purchased approximately $4 million in Enron stock but sold $24 million in Enron stock in sales to Enron that were concealed from Enron employees and the rest of the investing public.

76. October 12, 2001 Call with Credit Rating Agency. On or about October 12, 2001, LAY had a telephone call with a representative of a prominent credit rating agency. LAY stated that

Enron and its auditors had "scrubbed" the company's books and that no additional write-downs would be forthcoming. In fact, as LAY knew, Enron's international assets were being carried on Enron's books for billions of dollars in excess of their fair value. LAY further knew that he made misrepresentations to representatives of Andersen in order to conceal the Wessex $700 million goodwill impairment, and had falsely claimed that Enron would pursue a growth strategy in the water business. In addition, as LAY knew, Enron's auditors had not been able to "scrub" the books due to misrepresentations by him and others to them regarding Wessex goodwill.

77. Third Quarter 2001 Analyst Call. On October 16, 2001, Enron held its quarterly conference call with securities analysts to discuss its third quarter 2001 earnings results. LAY and CAUSEY prepared for and participated in the call. For the first time during the duration of the scheme to manipulate its reported financial results, Enron conceded that it had suffered large losses, totaling approximately $1 billion, in certain segments of its business. These areas included many declining assets that had been concealed in the "Raptor" hedges, as well as EBS. However, LAY and CAUSEY attempted to mislead the investing public and omit information about these losses in order to minimize the negative effect on Enron's stock price. LAY described the losses as "nonrecurring," that is, a one-time or unusual earnings event. However, as LAY and CAUSEY knew, the losses were not properly characterized as non-recurring.

78. In addition, LAY stated: "In connection with the early termination [of the Raptor structures], shareholders' equity will be reduced approximately $12 billion." In fact, as LAY and CAUSEY knew, the reduction in equity resulted not from the termination of the "Raptor" structures, but principally from a huge accounting error by Enron. In a further effort to deflect attention from the equity reduction, LAY, CAUSEY and others chose not to disclose the problem in Enron's third quarter press release.

79. LAY further stated that after review by its outside auditors, "we currently estimate, based upon this recent review, that up to $200 million goodwill adjustment may be necessary, and will be recorded as required by the accounting principles in the first quarter of 2002." In fact, as LAY and CAUSEY knew, the adjustment did not account for the impact on Enron of the impaired Wessex goodwill of approximately $700 million, due to misrepresentations by LAY and CAUSEY and others.

80. In response to questions regarding the value of Elektro, a Brazilian power plant, which Enron carried on its books as worth in excess of $2 billion, LAY stated that "[w]e may well have that asset and operate that asset for quite some time. It's not a bad asset, it's a good asset, just like a lot of the other assets in this portfolio." In fact, as LAY knew, Elektro was overvalued by as much as $1 billion and was classified by Enron's Risk Assessment and Control group as "troubled."

81. Third Quarter Investor and Analyst Roadshows. Immediately after the announcement of Enron's third quarter earnings results, LAY and other senior Enron executives held a series of meetings, or roadshows, with analysts and large institutional investors. LAY and the other senior executives touted EES as one of Enron's three primary businesses, and misleadingly portrayed EES as rapidly increasing in profitability, quarter to quarter and year to year. In fact, as LAY knew, Enron had shifted hundreds of millions of dollars in EES losses to Enron Wholesale in the first quarter of 2001, which gave EES the false appearance of profitability. LAY additionally distributed materials at the roadshows that misleadingly described the value of the international portfolio as $6.5 billion. In fact, as LAY knew, the $6.5 billion valuation vastly overstated the true value of the international assets by billions of dollars.

82. October 23, 2001 Analyst Call. Enron held a special conference call with securities analysts on October 23, 2001, in an effort to dispel growing public concerns about Enron's stock, which had lost 25% of its value in the week following the October 16, 2001, third quarter earnings announcement. LAY and CAUSEY prepared for and participated in the call. LAY stated that "[w]e're not trying to conceal anything. We're not hiding anything." "We're really trying to make sure that the analysts and the shareholders and the debt holders really know what's going on here. So, we are not trying to hold anything back." "I'm disclosing everything we've found." In fact, while professing candor, LAY failed to disclose numerous dire facts

about the state of Enron's business that he knew and that are outlined in this Indictment.

83. LAY further stated that "we, in fact both we and our outside auditors had already looked at all of our assets to determine if we had impairments under the new goodwill accounting rules that take effect first quarter next year. And as you probably recall, out of that review, indeed there was somewhat less than $200 million of adjustments that will be required in the first quarter out of our whole portfolio. And clearly, if there are impairments other than that, why then of course Arthur Andersen as well as our internal accounting staff would require that we write that down also." In fact, as LAY and CAUSEY knew, the adjustment did not include the impact on Enron of the impaired Wessex goodwill of approximately $700 million, due to misrepresentations by LAY and CAUSEY and others.

84. October 23, 2001 All Employees Meeting. Shortly after the October 23 analyst call, LAY attended another all-employee meeting, with live webcast and video teleconference communication to Enron's 28,000 employees. LAY stated "[o]ur liquidity is fine. As a matter of fact, it's better than fine, it's strong . . . ." In fact, LAY knew that in order to maintain liquidity, Enron had been forced to take the unusual step of offering its pipelines as collateral to obtain a needed $1 billion bank loan. LAY knew that Enron had failed to complete a $1 billion bond deal planned for execution since July, 2001. LAY also knew that the only readily available source of liquidity was the $3 billion corporate line of credit,

which, if drawn, would signal the dire straits of Enron's finances. Indeed, three days later, LAY authorized the withdrawal of the entire $3 billion from the line of credit.

85. November 12, 2001 Analyst Call. Enron executives held a special conference call with securities analysts on November 12, 2001, in another effort to dampen public concerns about the decline of Enron's stock and the nature of Enron's finances. LAY falsely stated that "[w]e don't have anything we're trying to hide . . . . I'm disclosing everything that we've found." LAY further stated that "one reason we went ahead and did this preliminary review with AA [Andersen] before we released these earnings, is to make sure we didn't have any other goodwill adjustments except the $200 million I mentioned we had to deal with, because we wanted to get as much of that on the table at this — with this report as we could." In fact, as LAY knew, he and other senior Enron managers again failed to disclose a litany of negative facts about Enron and that the $200 million figure did not account for the impact on Enron of the impaired Wessex goodwill of approximately $700 million, due to misrepresentations by LAY and CAUSEY and others.

## COUNT ONE
## (ALL DEFENDANTS: Conspiracy to Commit Securities and Wire Fraud)

86. The allegations in paragraphs 1 through 85 are realleged as if fully set forth here.

87. In or about and between late 1999 and December 2001, both dates being approximate and inclusive, within the Southern District of Texas and elsewhere, defendants KENNETH L. LAY, JEFFREY K. SKILLING, and RICHARD A. CAUSEY, and others, did knowingly and intentionally conspire (1) to willfully and unlawfully use and employ manipulative and deceptive contrivances and directly and indirectly (i) to employ devices, schemes and artifices to defraud; (ii) to make untrue statements of material fact and omit to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) to engage in acts, practices, and courses of conduct which would and did operate as a fraud and deceit upon members of the investing public, in connection with the purchase and sale of Enron securities and by use of the instruments of communication in interstate commerce and the mails, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff and Rule 10b-5 of the SEC, Title 17, Code of Federal Regulations, Section 240.10b-5, and (2) to devise a scheme and artifice to defraud Enron, its shareholders and other members of the investing public, the SEC, and others, including depriving Enron and its shareholders of the intangible right of honest services owed by LAY, SKILLING, CAUSEY and other Enron executives to them, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and, for the purpose of executing such scheme and artifice would transmit and cause to be transmitted by means of wire communications in interstate commerce

writings, signs, pictures and sounds, all in violation of Title 18, United States Code, Section 1343.

## OVERT ACTS

88. In furtherance of the conspiracy and in order to carry out the objectives thereof, on or about the dates listed below, in the Southern District of Texas and elsewhere, defendants KENNETH L. LAY, JEFFREY K. SKILLING, and RICHARD A. CAUSEY, and others, committed and caused to be committed the following overt acts, among others:

a. On or about November 15, 1999, SKILLING and CAUSEY caused to be filed via electronic transmission from Houston, Texas to the SEC in Washington, D.C., Enron's quarterly report on Form 10-Q for the period ending September 30, 1999;

b. On or about March 30, 2000, SKILLING and CAUSEY signed and caused to be filed via electronic transmission from Houston, Texas to the SEC in Washington, D.C., Enron's annual report on Form 10-K for the period ending December 31, 1999;

c. On or about April 12, 2000, SKILLING, CAUSEY and others conducted a quarterly conference call from Houston, Texas with securities analysts;

d. On or about May 15, 2000, SKILLING and CAUSEY caused to be filed via electronic transmission from Houston, Texas to the

SEC in Washington, D.C., Enron's quarterly report on Form 10-Q for the period ending March 31, 2000;

e. On or about August 14, 2000, SKILLING and CAUSEY caused to be filed via electronic transmission from Houston, Texas to the SEC in Washington, D.C., Enron's quarterly report on Form 10-Q for the period ending June 30, 2000;

f. On or about November 14, 2000, SKILLING and CAUSEY caused to be filed via electronic transmission from Houston, Texas to the SEC in Washington, D.C., Enron's quarterly report on Form 10-Q for the period ending September 30, 2000;

g. On or about January 22, 2001, SKILLING, CAUSEY and others conducted a quarterly conference call from Houston, Texas with securities analysts;

h. On or about January 25, 2001, SKILLING and others planned and delivered an annual presentation in Houston, Texas to securities analysts;

i. On or about March 23, 2001, SKILLING, CAUSEY and others conducted a conference call from Houston, Texas with securities analysts;

j. On or about April 2, 2001, SKILLING and CAUSEY signed and caused to be filed via electronic transmission from Houston, Texas to the SEC in Washington, D.C., Enron's annual report on Form 10-K for the period ending December 31, 2000;

k. On or about April 17, 2001, SKILLING, CAUSEY and others conducted a quarterly conference call with securities analysts;

l. On or about May 15, 2001, SKILLING and CAUSEY caused to be filed via electronic transmission from Houston, Texas to the SEC in Washington, D.C., Enron's quarterly report on Form 10-Q for the period ending March 31, 2001;

m. On or about July 12, 2001, SKILLING, CAUSEY and others conducted a quarterly conference call from Houston, Texas with securities analysts;

n. On or about August 14, 2001, CAUSEY caused to be filed via electronic transmission from Houston, Texas to the SEC in Washington. D.C., Enron's quarterly report on Form 10-Q for the period ending June 30, 2001;

o. On or about September 26, 2001, LAY conducted an "online forum" with Enron employees;

p. On or about October 12, 2001, LAY spoke to a representative of a national credit rating agency regarding Enron's credit rating;

q. On or about October 12, 2001, LAY and CAUSEY met with Arthur Andersen audit partners regarding goodwill;

r. On or about October 16, 2001, LAY, CAUSEY and others conducted a quarterly conference call from Houston, Texas with securities analysts;

s. On or about October 23, 2001, LAY, CAUSEY and others conducted a quarterly conference call from Houston, Texas with securities analysts;

t. On or about October 23, 2001, LAY and others conducted an "all employee" Enron meeting from Houston, Texas; and

u. On or about November 12, 2001, LAY and others conducted a conference call from Houston, Texas with securities analysts.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

## COUNT TWO
## (SKILLING/CAUSEY: Securities Fraud: Raptor Fraud)

89. The allegations in paragraphs 1 through 85 are realleged as if fully set forth here.

90. In or about and between January 2000 and December 2001, both dates being approximate and inclusive, within the Southern District of Texas and elsewhere, defendants JEFFREY K. SKILLING and RICHARD A. CAUSEY, and others, in a course of conduct involving the construction and use of Enron financial devices known as the Raptors, did

willfully and unlawfully use and employ manipulative and deceptive devices and contrivances and directly and indirectly (i) employ devices, schemes and artifices to defraud; (ii) make untrue statements of material facts and omit to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) engage in acts, practices, and courses of conduct which would and did operate as a fraud and deceit upon members of the investing public, in connection with purchases and sales of Enron securities and by the use of the instruments of communication in interstate commerce and the mails.

(Title 17, Code of Federal Regulations, Section 240.10b-5; Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 355.1 et seq.)

## COUNTS THREE THROUGH SIX (SKILLING/CAUSEY: Wire Fraud: Raptor Fraud)

91. The allegations of paragraphs 1 through 85 are realleged as if fully set forth here.

92. On or about the dates set forth below, each such date constituting a separate count of this Indictment, within the Southern District of Texas and elsewhere, defendants JEFFREY K. SKILLING and RICHARD A. CAUSEY, and others, having devised a scheme and artifice to defraud Enron, its

shareholders and other members of the investing public, the SEC, and others, including depriving Enron and its shareholders of the intangible right of honest services owed by SKILLING and CAUSEY and other Enron executives to them, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, did for the purposes of executing such scheme and artifice transmit and cause to be transmitted by means of wire communication in interstate commerce writings, signs, signals, pictures, and sounds, specifically the wire transfers of funds specified below among Enron, LJM and entities involved in the Raptor hedging structures.

| | | | |
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| 3. | JEFFREY K. SKILLING<br>RICHARD A. CAUSEY | September 7, 2000 | $41,000,000 from Enron Citibank account no. 00076486, New York, New York, to Talon 1 LLC Wilmington Trust Co. account no. 51419, Wilmington, Delaware |
| 4. | JEFFREY K. SKILLING<br>RICHARD A. | September 7, 2000 | $41,000,000 from Talon 1 LLC |

| | | | |
|---|---|---|---|
| | CAUSEY | | Wilmington Trust Co. account no. 51419, Wilmington, Delaware, to LJM2-Talon LLC Chase Manhattan account no. 323-156479, Houston, Texas |
| 5. | JEFFREY K. SKILLING<br>RICHARD A. CAUSEY | October 3, 2000 | $41,000,000 from Enron Citibank account no. |

| | | | |
|---|---|---|---|
| | | | 00076486, New York, New York, to Timberwolf I LLC Wilmington Trust Co. account no. 51971, Wilmington, Delaware |
| 6. | JEFFREY K. SKILLING<br>RICHARD A. CAUSEY | October 4, 2000 | $41,000,000 from Timberwolf I LLC Wilmington Trust Co. |

| | | | |
|---|---|---|---|
| | | | account no. 51971, Wilmington, Delaware, to LJM2-Timberwolf LLC Chase Manhattan account no. 323-864104, Houston, Texas |

(Title 18, United States Code, Sections 1343, 2 and 3551 et seq.)

## COUNT SEVEN
## (CAUSEY: Money Laundering Conspiracy — the Raptors)

93. The allegations of paragraphs 1 through 85 and 92 are realleged as if fully set forth here.

94. In or about and between January 2000 and December 2001, both dates being approximate and inclusive, within the Southern District of Texas and elsewhere, the defendant RICHARD A. CAUSEY and others did knowingly and intentionally conspire to commit offenses against the United States in violation of Title 18, United States Code, Sections 1956 and 1957, to wit:

(a) to conduct and attempt to conduct financial transactions affecting interstate commerce, which transactions involved the proceeds of specified unlawful activity, to wit: wire fraud, in violation of Title 18, United States Code, Section 1343, and securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and 17 C.F.R. 240.10b-5, (i) with the intent to promote the carrying on of specified unlawful activity, to wit: wire fraud and securities fraud, and (ii) knowing that the transactions were designed in whole and in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity, and that while conducting and attempting to conduct such financial transactions, knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and 1956(a)(1)(B)(i); and

(b) to engage and attempt to engage in monetary transactions by, through and to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than $10,000, that is the deposit, withdrawal, and transfer of funds, such property having been derived from a specified unlawful activity, to wit: wire fraud and securities fraud, in violation of the provisions of Title 18, United States Code, Section 1957.

## OVERT ACTS

95. In furtherance of the conspiracy and to effect the objects thereof, within the Southern District of Texas and elsewhere, the defendant RICHARD A. CAUSEY and others did commit and cause to be committed the following overt acts, among others:

| | | |
|---|---|---|
| a. | September 19, 2000 | $6,000,000 from LJM2-Talon LLC Chase Manhattan account no. 323-156479, Houston, Texas, to Talon 1 LLC Wilmington Trust Co. account no. 51419, |

| | | |
|---|---|---|
| | | Wilmington, Delaware |
| b. | September 19, 2000 | $6,000,000 from Talon 1 LLC Wilmington Trust Co. account no. 51419, Wilmington, Delaware, to Enron Citibank account no. 00076486, New York, New York |
| c. | October 13, 2000 | $1,100,000 from LJM2-Timberwolf LLC Chase Manhattan account no. 323-864104, Houston, Texas, to Timberwolf I LLC Wilmington Trust Co. account no. 51971, Wilmington, Delaware |
| d. | October 13, 2000 | $1,100,000 from |

| | | |
|---|---|---|
| | | Timberwolf I LLC<br>Wilmington Trust Co.<br>account no. 51971,<br>Wilmington, Delaware, to<br>Enron Citibank account<br>no. 00076486, New York<br>New York |

(Title 18, United States Code, Sections

1956(h) and 3551 et seq.)

## COUNTS EIGHT THROUGH ELEVEN

(CAUSEY: Money Laundering - the Raptors)

96. The allegations of paragraphs 1 through 85, 92 and 95 are realleged as if fully set forth here.

97. On or about the dates set forth below, each such date constituting a separate count of this Indictment, the defendant RICHARD A. CAUSEY and others, knowing that the property involved in the financial transaction represented the proceeds of some form of unlawful activity, did knowingly conduct and attempt to conduct such a financial transaction affecting interstate commerce which in fact involved the proceeds of specified unlawful

activity, to wit: wire fraud in violation of Title 18, United States Code, Section 1343, and securities fraud, in violation of Title 15, United States Code, Sections 78j(b), 78ff and 17 C.F.R. 240.10b-5, (i) with the intent to promote the carrying on of specified unlawful activity, to wit: wire fraud and securities fraud, and (ii) knowing that the transaction was designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of specified unlawful activity, to wit: wire fraud and securities fraud, as follows:

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| 8. | September 19, 2000 | $6,000,000 from LJM2-Talon LLC Chase Manhattan account no. 323-156479, Houston, Texas, to Talon 1 LLC Wilmington Trust Co. account no. 51419, Wilmington, Delaware |
| 9. | September 19, 2000 | $6,000,000 from Talon 1 LLC Wilmington Trust Co. account no. 51419, Wilmington, Delaware, to |

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|---|---|---|
| | | Enron Citibank account no. 00076486, New York, New York |
| 10. | October 13, 2000 | $1,100,000 from LJM2-Timberwolf LLC Chase Manhattan account no. 323-864104, Houston, Texas, to Timberwolf I LLC Wilmington Trust Co. account no. 51971, Wilmington, Delaware |
| 11. | October 13, 2000 | $1,100,000 from Timberwolf I LLC Wilmington Trust Co. account no. 51971, Wilmington, Delaware, to Enron Citibank account no. 00076486, New York, |

| | | |
|---|---|---|
| | | New York |

(Title 18, United States Code, Sections 1956(a)(1)(A)(i) and 1956(a)(1)(B)(i), 2 and 3551 et seq.)

## COUNTS TWELVE AND THIRTEEN

## (LAY: Wire Fraud: False And Misleading Statements in Employee Meetings)

98. The allegations of paragraphs 1 through 85 are realleged as if fully set forth here.

99. On or about the dates set forth below, each such date constituting a separate count of this Indictment, within the Southern District of Texas and elsewhere, defendant KENNETH L. LAY, having devised a scheme and artifice to defraud Enron, its shareholders and other members of the investing public, the SEC, and others, including depriving Enron and its shareholders of the intangible right of honest services owed by LAY and other Enron executives to them, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, did for the purposes of executing such scheme and artifice transmit and cause to be transmitted by means of wire communication in interstate and

foreign commerce writings, signs, signals, pictures, and sounds, as follows:

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| 12. | September 26, 2000 | Enron Online Forum electronic transmission from Houston, Texas to other states and internationally |
| 13. | October 23, 2001 | All Employee Meeting video teleconference from Houston, Texas to other states and internationally |

(Title 18, United States Code, Sections 1343, 2 and 3551 et seq.)

## COUNTS FOURTEEN THROUGH TWENTY

## (SKILLING/CAUSEY: Securities Fraud: Financial Statements)

100. The allegations of paragraphs 1 through 85 are realleged as if fully set forth here.

101. On or about the dates set forth below, each such date constituting a separate count of this Indictment, within the Southern District of Texas and elsewhere, defendants JEFFREY K. SKILLING and RICHARD A. CAUSEY, and others, in Enron Forms 10-K and 10-Q filed with the SEC in Washington, D.C., did willfully and unlawfully use and employ manipulative and deceptive devices and contrivances and directly and indirectly (i) employ devices, schemes and artifices to defraud; (ii) make untrue statements of material facts and omit to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) engage in acts, practices, and courses of conduct which would and did operate as a fraud and deceit upon members of the investing public, in connection with purchases and sales of Enron securities and by the use of the instruments of communication in interstate commerce and the mails.

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| 14. | March 30, 2000 | Form 10-K for Enron for the Fiscal Year 1999 |
| 15. | May 15, 2000 | Form 10-Q for Enron for the First Quarter 2000 |
| 16. | August 14, 2000 | Form 10-Q for Enron for the Second Quarter 2000 |
| 17. | November 14, | Form 10-Q for Enron for the |

| | | |
|---|---|---|
| | 2000 | Third Quarter 2000 |
| 18. | April 2, 2001 | Form 10-K for Enron for the Fiscal Year 2000 |
| 19. | May 15, 2001 | Form 10-Q for Enron for the First Quarter 2001 |
| 20. | August 14, 2001 | Form 10-Q for Enron for the Second Quarter 2001 |

(Title 17, Code of Federal Regulations, Section 240.10b-5; Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

## COUNTS TWENTY-ONE THROUGH THIRTY

(ALL DEFENDANTS: Securities Fraud: Presentations to Securities Analysts and Rating Agency Representative)

102. The allegations of paragraphs 1 through 85 are realleged as if fully set forth here.

103. On or about the dates set forth below, each such date constituting a separate count of this Indictment, within the Southern District of Texas and elsewhere, defendants KENNETH L. LAY, JEFFREY K. SKILLING, and RICHARD A. CAUSEY, and others, in presentations to securities analysts and rating agencies, did willfully and unlawfully use and employ manipulative and deceptive devices and contrivances and directly and indirectly (i) employ devices, schemes and artifices to defraud; (ii) make untrue statements of material facts and omit to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) engage in acts, practices, and courses of conduct which would and did operate as a fraud and deceit upon members of the investing public, in connection with purchases and sales of Enron stock and by the use of the instruments of communication in interstate commerce and the mails.

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| 21. | JEFFREY K. SKILLING<br>RICHARD A. CAUSEY | April 12, 2000 | First Quarter 2000 Analyst Conference Call |
| 22. | JEFFREY K. SKILLING | January 22, 2001 | Fourth Quarter 2000 |

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|---|---|---|---|
| | RICHARD A. CAUSEY | | Analyst Conference Call |
| 23. | JEFFREY K. SKILLING | January 25, 2001 | Annual Analyst Conference in Houston, Texas |
| 24. | JEFFREY K. SKILLING<br>RICHARD A. CAUSEY | March 23, 2001 | Analyst Conference Call to Discuss Enron Stock Price |
| 25. | JEFFREY K. SKILLING<br>RICHARD A. CAUSEY | April 17, 2001 | First Quarter 2001 Analyst Conference Call |

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| 26. | JEFFREY K. SKILLING<br>RICHARD A. CAUSEY | July 12, 2001 | Second Quarter 2001 Analyst Conference Call |
| 27. | KENNETH L. LAY | October 12, 2001 | Telephone Call with Rating Agency Representative in New York |
| 28. | KENNETH L. LAY<br>RICHARD A. CAUSEY | October 16, 2001 | Third Quarter 2001 Analyst Conference Call |
| 29. | KENNETH L. LAY<br>RICHARD A. | October 23, 2001 | Analyst Conference Call |

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|---|---|---|---|
| | CAUSEY | | |
| 30. | KENNETH L. LAY | November 12, 2001 | Analyst Conference Call |

(Title 17, Code of Federal Regulations, Section 240.10b-5; Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

## COUNTS THIRTY-ONE AND THIRTY-TWO

### (SKILLING/CAUSEY: False Statements to Auditors In Annual Representation Letters)

104. The allegations in paragraphs 1 through 85 are realleged as if fully set forth here.

105. On or about the dates set forth below, each such date constituting a separate count of this Indictment, within the Southern District of Texas and elsewhere, defendants JEFFREY K. SKILLING and RICHARD A. CAUSEY, and others, as officers of the company, knowingly and willfully made and caused to be made materially false and misleading statements, and omitted to state material facts necessary in order to make statements made, in light of the circumstances under which the statements

were made, not misleading, to accountants retained by Enron, an issuer of a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, in connection with the audit and examination of the financial statements of Enron as required by law to be made, and the preparation and filing of documents and reports required to be filed with the SEC pursuant to rules and regulations enacted by the SEC.

106. Specifically, while agreeing that they were "responsible for the fair presentation of the financial statements," SKILLING and CAUSEY falsely represented to Enron's accountants that, among other things, (a) the statements and representations made in Enron's financial statements were true; (b) Enron properly recorded or disclosed in its financial statements all agreements to repurchase assets previously sold; (c) Enron properly recorded or disclosed in its financial statements guarantees, whether written or oral, under which Enron was contingently liable; (d) Enron's unaudited quarterly financial data fairly summarized, among other things, the operating revenues, net income and per share data based upon that income for each quarter; (e) there was no material fraud or any other irregularities that, although not material, involved management or other employees who had a significant role in Enron's system of internal control, or fraud involving other employees that could have a material effect on the financial statements; (f) all related party transactions, including sales and guarantees (both oral and written), were properly recorded and disclosed; and (g) Enron made available to the

accountants all financial records and related data; well knowing that these statements were false.

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| 31. | JEFFREY K.<br>SKILLING<br>RICHARD<br>A. CAUSEY | March 13,<br>2000 | Annual Representation Letter in Connection with Enron Form 10-K for Year 1999 |
| 32. | JEFFREY K.<br>SKILLING<br>RICHARD<br>A. CAUSEY | February 23,<br>2001 | Annual Representation Letter in Connection with Enron Form 10-K for Year 1999 |

(Title 15, United States Code, Sections 78m(a), 78m(b)(2), and 78ff; Title 17, Code of Federal Regulations, Section 240.13b2-2; and Title 18, United States Code, Sections 2 and 3551 et seq.)

## COUNTS THIRTY-THREE THROUGH THIRTY-SEVEN
### (SKILLING/CAUSEY: False Statements to Auditors In Quarterly Representation Letters)

107. The allegations in paragraphs 1 through 85 are realleged as if fully set forth here.

108. On or about the dates set forth below, each such date constituting a separate count of this Indictment, within the Southern District of Texas and elsewhere, defendants JEFFREY K. SKILLING and RICHARD A. CAUSEY, and others, as officers of the company, knowingly and willfully made and caused to be made materially false and misleading statements, and omitted to state material facts necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading, to accountants retained by Enron, an issuer of a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, in connection with the review of the financial statements of Enron as required by law to be made, and the preparation and filing of documents and reports required to be filed with the SEC pursuant to rules and regulations enacted by the SEC.

109. Specifically, while agreeing that they were "responsible for the fair presentation of the financial statements," SKILLING and CAUSEY falsely represented to Enron's accountants that, among other things, (a) the financial statements were presented in accordance with generally accepted accounting principles; (b) Enron properly recorded or disclosed in its financial statements guarantees, whether written or oral, under which Enron was contingently liable; (c) there was no fraud involving management or employees who had a significant role in internal control, or fraud involving others that could have a material effect on the financial statements; (d) all related party transactions, including sales and guarantees (both

oral and written), were properly recorded and disclosed; and (c) Enron made available to the accountants all financial records and related data; well knowing that these statements were false.

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| 33. | JEFFREY K. SKILLING<br>RICHARD A. CAUSEY | May 12, 2000 | Quarterly Representation Letter in Connection with Enron Form 10-Q for First Quarter 2000 |
| 34. | JEFFREY K. SKILLING<br>RICHARD A. CAUSEY | August 11, 2000 | Quarterly Representation Letter in Connection with Enron Form 10-Q for Second Quarter 2000 |
| 35. | JEFFREY K. SKILLING<br>RICHARD A. CAUSEY | November 13, 2000 | Quarterly Representation Letter in Connection with Enron Form 10-Q for Third Quarter 2000 |
| 36. | JEFFREY K. | May 15, | Quarterly Representation Letter in |

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| | SKILLING<br>RICHARD<br>A. CAUSEY | 2001 | Connection with Enron Form 10-Q for First Quarter 2001 |
| 37. | JEFFREY K. SKILLING<br>RICHARD<br>A. CAUSEY | August 14, 2001 | Quarterly Representation Letter in Connection with Enron Form 10-Q for Second Quarter 2001 |

(Title 15, United States Code, Sections 78m(a), 78m(b)(2), and 78ff; Title 17, Code of Federal Regulations, Section 240.13b2-2; and Title 18, United States Code, Sections 2 and 3551 et seq.)

## COUNT THIRTY EIGHT
## (LAY: Bank Fraud)

110. The allegations in paragraphs 1 through 85 are realleged as if fully set forth here.

111. In or about and between January 1999 and November 2001, both dates being approximate and inclusive, within the Southern District of Texas and elsewhere, the defendant KENNETH L. LAY

executed and attempted to execute a scheme and artifice (a) to defraud Bank of America, Chase Bank of Texas, and Compass Bank (the "Banks"), the accounts of which were insured by the Federal Deposit Insurance Corporation, and (b) to obtain money, funds and credits under the custody and control of the Banks, by means of materially false and fraudulent pretenses, representations, and promises.

112. Pursuant to Regulations U and X, prescribed by the Board of Governors of the Federal Reserve System, a borrower may not purchase or carry any security in wilful violation of Regulation U. Regulation U requires lenders not to extend, maintain or arrange credit to be used for the purpose of buying or carrying margin stock ("purpose credit") in an amount that exceeds the maximum loan value of such stock. Lines of credit that are not to be used to purchase or carry margin stock are known as "non-purpose lines of credit." The purpose of these rules is to safeguard the national economy by reducing and regulating the amount of credit used to speculate in the stock market.

113. In or about January 1999 through November 2001, the defendant KENNETH L. LAY controlled, on behalf of himself, his family, and a family investment vehicle, several non-purpose lines of credit at: (a) Bank of America (two lines of credit, in the amount of $10 million (the "$10 million line of credit") and between $37.5 and $40 million at various times (the "$40 million line of credit")), (b) Chase Bank of Texas (between $12 and $15 million line of credit at various times) and

(c) Compass Bank ($10 million line of credit). To obtain and renew each of these lines of credit, LAY was required to and did represent to the Banks in documents known as Statements of Purpose for an Extension of Credit Secured by Margin Stock ("Forms U-1"), pledge agreements, and promissory notes that he would not directly or indirectly use the non-purpose lines of credit for the purpose of purchasing or carrying margin stock, as follows:

| | | |
|---|---|---|
| February 3, 1999 | Bank of America ($40 million line of credit) | Pledge Agreement |
| February 3, 1999 | Bank of America ($10 million line of credit) | Pledge Agreement |
| June 15, 1999 | Chase Bank of Texas | Form U-1 |
| June 15, 1999 | Chase Bank of Texas | Promissory Note |

| | | |
|---|---|---|
| November 1, 1999 | Compass Bank | Form U-1 |
| February 28, 2000 | Bank of America ($40 million line of credit) | Pledge Agreement |
| August 29, 2000 | Chase Bank of Texas | Promissory Note |
| September 27, 2000 | Bank of America ($10 million line of credit) | Form U-1 |
| September 27, 2000 | Bank of America ($40 million line of credit) | Form U-1 |
| November 9, | Bank of | Pledge Agreement |

| | | |
|---|---|---|
| 2001 | America<br>($10 million<br>line of credit) | |

114. Based on LAY's representations, the Banks extended non-purpose lines of credit with loan to value ratios of 70 to 80 percent. These non-purpose lines of credit gave LAY access to millions of dollars more credit than "purpose" lines of credit would have provided. The non-purpose lines of credit were secured by shares of stock, primarily Enron stock. At various times, LAY used funds drawn from a line of credit provided by Enron to pay down his non-purpose lines of credit provided by the Banks.

115. Between January 1999 and November 2001, in contravention of his representations to the Banks, LAY directly and indirectly purchased and carried margin stock with funds drawn from his non-purpose lines of credit, thereby exposing the Banks to a higher risk of loss.

116. On or about the dates set forth below, within the Southern District of Texas and elsewhere, the defendant KENNETH L. LAY, having devised a scheme and artifice to defraud the Banks, did for the purpose of executing such scheme and artifice cause the transfers of funds set forth below:

| | | |
|---|---|---|
| Bank of America ($40 million line | January 13, | $2,300,000 |

| | | |
|---|---|---|
| of credit) | 1999 | |
| Bank of America ($40 million line of credit) | January 26, 1999 | $600,000 |
| Bank of America ($40 million line of credit) | May 21, 1999 | $2,525,000 |
| Bank of America ($40 million line of credit) | June 15, 1999 | $190,000 |
| Bank of America ($40 million line of credit) | July 26, 1999 | $1,000,000 |
| Bank of America ($40 million line of credit) | December 14, 1999 | $500,000 |
| Bank of America ($40 million line of credit) | March 1, 2000 | $2,000,000 |
| Bank of America ($40 million line of credit) | March 1, 2000 | $5,000,000 |
| Bank of America ($40 million line of credit) | June 29, 2000 | $1,000,000 |

| | | |
|---|---|---|
| Bank of America ($40 million line of credit) | July 19, 2000 | $2,800,000 |
| Bank of America ($40 million line of credit) | September 13, 2000 | $1,250,000 |
| Compass Bank | November 19, 1999 | $1,000,000 |
| Chase Bank of Texas | July 13, 1999 | $2,000,000 |
| Chase Bank of Texas | October 28, 1999 | $500,000 |
| Chase Bank of Texas | December 1, 1999 | $1,000,000 |
| Bank of America ($10 million line of credit) | March 1, 2000 | $575,000 |
| Bank of America ($10 million line of credit) | July 19, 2000 | $610,000 |
| Bank of America ($10 million line of credit) | November 26, 2001 | $200,000 |
| Bank of America ($10 million line of credit) | November 28, 2001 | $320,000 |

(Title 18, United States Code, Sections 1344, 2 and 3551 et seq.)

## COUNTS THIRTY-NINE THROUGH FORTY-ONE
### (LAY: False Statements to Banks)

117. The allegations of paragraphs 1 through 85 and 111 through 116 are realleged as if fully set forth here.

118. On or about the dates set forth below, each such date constituting a separate count of this Indictment, defendant KENNETH L. LAY knowingly made false statements in Forms U-1 and a pledge agreement for the purpose of influencing the action of the Banks set forth below in the issuance, extension and renewal of non-purpose loans and lines of credit. Specifically, LAY falsely represented in each instance that he would not use the proceeds of the non-purpose lines of credit directly or indirectly to purchase or carry margin stock, when in truth and fact, as LAY well knew, he intended to use proceeds of those lines of credit directly and indirectly to purchase and carry margin stock, as follows:

| | | | |
|---|---|---|---|
| 39. | February 3, 1999 | Bank of America ($40 million line of credit) | Pledge Agreement |

| | | | |
|---|---|---|---|
| 40. | June 15, 1999 | Chase Bank of Texas | Form U-1 |
| 41. | November 1, 1999 | Compass Bank | Form U-1 |

(Title 18, United States Code, Sections 1014, 2 and 3551 et seq.)

## COUNTS FORTY-TWO THROUGH FIFTY-ONE
## (SKILLING: Insider Trading)

119. The allegations in paragraphs 1 through 85 are realleged as if fully set forth here.

120. On or about the dates set forth below, each such date constituting a separate count of this Indictment, within the Southern District of Texas and elsewhere, defendant JEFFREY K. SKILLING knowingly and willfully used and employed manipulative and deceptive devices and contrivances, by use of means and instrumentalities of interstate commerce, in violation of Rule 10b-5 of the Rules and Regulations of the SEC (Title 17, Code of Federal Regulations, Section 240.10b-5), in that he engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon members of the investing public in connection with the purchase or sale of securities, in violation of Title 15, United States Code, Sections 78j(b) and 78ff. Specifically, while in possession of material non-public information, SKILLING sold shares of

Enron stock and generated total proceeds of $62,626,401.90.

| | | | | |
|---|---|---|---|---|
| 42. | April 25, 2000 | 10,000 | $73.875<br>$73.9375 | $738,893.75 |
| 43. | April 26, 2000 | 86,217 | $74.00<br>$73.875<br>$72.50 | $6,338,183.00 |
| 44. | August 30, 2000 | 15,000 | $86.125 | $1,291,875.00 |
| 45. | September 1, 2000 | 60,000 | $87.00<br>$86.875<br>$87.25 | $5,220,000.00 |
| 46. | September 5, 2000 | 11,441 | $85.00 | $972,485.00 |
| 47. | November 1, 2000 | 72,600 | $83.2406<br>$83.0625 | $6,041,023.50 |
| 48. | November 2, 2000 | 20,000 | $82.3381 | $1,646,762.00 |
| 49. | November 7, 2000 | 46,068 | $82.5872 | $3,804,627.13 |
| 50. | November 15, 200 | 10,000<br>per | $84.00<br>to | $20,985,247.42 |

| | | | | |
|---|---|---|---|---|
| | | week for 31 weeks per written sales plan | $49.90 | |
| 51. | September 17, 2001 | 500,000 | $31.5061<br>$31.0822 | $15,587,305.10 |

(Title 17, Code of Federal Regulations, Section 240.10b-5; Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

## COUNTS FIFTY-TWO AND FIFTY-THREE
## (CAUSEY: Insider Trading)

121. The allegations in paragraphs 1 through 85 are realleged as if fully set forth here.

122. On or about the dates set forth below, each such date constituting a separate count of this Indictment, within the Southern District of Texas and elsewhere, defendant RICHARD A. CAUSEY knowingly and willfully used and employed manipulative and deceptive devices and contrivances, by use of means and instrumentalities of interstate commerce, in violation of Rule 10b-5 of the Rules and Regulations of the SEC (Title 17, Code of Federal Regulations, Section 240.10b-5), in that he engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon members of the investing public in connection with the purchase or sale of securities, in violation of Title 15, United States Code, Sections 78j(b) and 78ff. Specifically, while in possession of material non-public information, CAUSEY sold shares of Enron stock and generated total proceeds of $10,316,807.83.

| | | | | |
|---|---|---|---|---|
| 52. | January 21, 2000 | 45,000 | $72.00<br>$71.00 | $3,220,000.00 |
| 53. | September 28, 2000 | 80,753 | $87.8829 | $7,096,807.83 |

(Title 17, Code of Federal Regulations, Section 240.10b-5; Title 15, United States Code; Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

## FORFEITURE ALLEGATIONS

(ALL DEFENDANTS: 18 U.S.C. §§ 981 and 982,

28 U.S.C. § 2461)

123. Upon conviction of one or more of the offenses alleged with respect to defendant KENNETH L. LAY in Counts 1, 12-13, 27-30, and 38-41 of this Indictment, with respect to defendant JEFFREY K. SKILLING in Counts 1-6, 14-30, and 42-51 of this Indictment, and with respect to defendant RICHARD A. CAUSEY in Counts 1-11, 14-22, 24-26, 28-29, 52, and 53 of this Indictment, defendants LAY, SKILLING and CAUSEY shall forfeit to the United States pursuant to 18 U.S.C. § 981(a)(1)(c) and 28 U.S.C. § 2461(c) any property, real or personal, constituting or derived from proceeds obtained directly or indirectly as a result of the said violations, including but not limited to the following:

124. With respect to defendant JEFFREY K. SKILLING, the following property:

(A) a sum of money equal to the amount of proceeds obtained as a result of the conspiracy, securities fraud and wire fraud offenses, for which the defendants are jointly and severally liable;

(B) real property known as 1999 McKinney Ave., #1008, Dallas, Texas;

(C) real property known as 10 North Briarwood Court, Houston, Texas;

(D) $50,000 in cash in MML Investors Services, Inc., BMA account number 251518;

(E) securities listed in Attachment A, worth approximately $49,342,462.98, and $808,643.74 in cash, contained in Charles Schwab account number 8110-6773;

(F) $132,544.65 contained in Mass Mutual Financial Group Policy account number 11502764; and

(G) $91,800.51 in cash contained in Southwest Bank account number 3229351 in the name of Veld Interests, Inc.

125. With respect to defendant KENNETH L. LAY, the following property:

(A) a sum of money equal to the amount of proceeds obtained as a result of the conspiracy, and securities and wire fraud offenses, for which the defendants are jointly and severally liable; and

(B) real property, together with its appurtenances, improvements, fixtures, attachments and easements, located at 2121 Kirby Drive, Residential Unit 33, 33rd floor, Houston, Texas, 77019, more particularly described as a condominium apartment unit and an individual interest in the common elements located in and being a part of the Huntingdon, a Condominium regime in Harris County, Texas.

126. With respect to defendant RICHARD A. CAUSEY, the following property:

(A) a sum of money equal to the amount of proceeds obtained as a result of the conspiracy, securities fraud and wire fraud offenses, for which the defendants are jointly and severally liable;

(B) real property known as 39 North Regent Oak, The Woodlands, Texas;

(C) securities listed in Attachment B, worth approximately $2,589,020.98, contained in First

Union account number 2005-0471;

(D) approximately $274,305.69 in Manulife North America Annuity account number 2107848; and

(E) approximately $219,434.87 in Manulife North America Annuity account number 2106714.

127. Pursuant to Title 18, United States Code, Section 982(a)(1), upon conviction of one or more of the offenses alleged with respect to defendant RICHARD A. CAUSEY in Counts 7 through 11 shall forfeit to the United States all right, title, and interest in any and all property involved in each offense in violation of Title 18, United States Code, Section 1956 and 1957, or conspiracy to commit such offense, for which the defendant is convicted, and all property traceable to such property, including the following: 1) all money or other property that was the subject of each transaction, transportation, transmission or transfer in violation of Section 1956 and 1957; 2) all commissions, fees and other property constituting proceeds obtained as a result of those violations; and 3) all property used in any manner or part to commit or to facilitate the commission of those violations.

128. In the event that any property described above as being subject to forfeiture, as a result of any act or omission by either defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to or deposited with a third person;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty; it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b)(1), to seek forfeiture of any other property of defendants KENNETH L. LAY, JEFFREY K. SKILLING, and RICHARD A. CAUSEY up to the value of the forfeitable property described above.

(Title 18, United States Code, Sections 981

and 982; Title 28, United States Code, Section 2461.)

## SENTENCING ALLEGATIONS

129. With respect to each count of the Indictment, except Counts 38-41, with which they are charged:

(a) LAY, SKILLING and CAUSEY were each leaders and organizers of a criminal activity that involved five or more participants and was otherwise extensive; and

(b) LAY, SKILLING and CAUSEY each abused their positions of public and private trust and CAUSEY used special skills in a manner that significantly facilitated the commission and concealment of the offenses.

130. With respect to each count of the Indictment, except Counts 7-11,

(a) the loss exceeded $100 million;

(b) the offense involved more than minimal planning

(c) the offense involved a scheme to defraud more than 50 victims;

(d) the offense involved sophisticated means; and

(e) the offense was committed through mass marketing.

131. With respect to each count of the Indictment, except Counts 7-11,

(a) the offense affected a financial institution; and

(b) LAY, SKILLING and CAUSEY each derived more than $1 million in gross receipts from the offense.

132. With respect to Counts 7 through 11 of the Indictment, the value of the funds exceeded $6 million.

133. With respect to Counts 38 through 41 of the Indictment:

(a) the gain exceeded $60 million; and

(b) the offense involved more than minimal planning.

Dated: Houston, Texas
July 7, 2004

A TRUE BILL

s/MP Johnson
FOREPERSON

JOSHUA R. HOCHBERG
Acting U. S. Attorney

ANDREW WEISSMANN
Director, ENRON TASK FORCE

By: s/illegible
SEAN M. BERKOWITZ
JOHN H. HEMANN
JOHN H. HUESTON
LINDA A. LACEWELL
KATHRYN H. RUEMMLER
Special Attorney, ENRON TASK FORCE

LAUREL LOOMIS
PATRICK MURPHY
Trial Attorneys, ENRON TASK FORCE

## ATTACHMENT A
## List of Bonds held in SKILLING's Charles

Schwab 8110-6673:

| Description | Par Value | Value as of 12/31/2003 |
|---|---|---|
| Alamo tex cmnty college 5.375% 17 due 11/1/17 | 3,355,000.00 | $3,709,422.20 |
| Allianceber multi mkt strategy A | 1,505.85 | $8,628.51 |
| Delaware transn auth transn 4.50% 7/1/16 | 3,485,000.00 | $3,616,210.25 |
| Houston tex 5.375% 13 cmnty due 4/15/13 | 3,000,000.00 | $3,349,560.00 |
| Jefferson la 5.25% 18 sales tax due 12/1/18 | 2,770,000.00 | $3,025,421.70 |
| Minnesota pub facs 5%13 auth wtr due 3/1/13 | 2,000,000.00 | $2,198,020.00 |
| Minnesota pub facs 5% 15 auth wtr due 3/1/15 | 3,000,000.00 | $3,259,440.00 |
| Montgomery cnty 5.25% 13 genl oblig due 10/1/13 | 2,500,000.00 | $2,835,850.00 |
| New jersey st 6% 15 transn tr due | 2,000,000.00 | $2,400,500.00 |

| Description | Par Value | Value as of 12/31/2003 |
|---|---|---|
| 12/15/15 | | |
| Pasadena tex indpt genl oblig 5.0% 15 due 2/15/15 | 2,485,500.00 | $2,696,920.80 |
| Pflugerville tex 5.5% 13 genl oblig due 8/15/13 | 2,265,000.00 | $2,557,411.50 |
| Spartanburg cnty 4.25% 14 genl oblig due 3/1/14 | 3,320,000.00 | $3,502,234.80 |
| Standish Mellon Intl fixed income fund II | 82,524.96 | $1,895,598.22 |
| University ala univ 5% 16 revs due 10/1/16 | 2,500,000.00 | $2,700,875.00 |
| University ala univ 5% 17 revs due 10/1/17 | 2,500,000.00 | $2,680,075.00 |
| Williamson cnty 5% 18 genl oblig due 4/1/18 | 2,500,000.00 | $2,683,125.00 |
| Wisconsin st 4.50% 16 transn rev due 7/1/16 | 3,000,000.00 | $3,122,550.00 |
| Wisconsin st 4.50% 17 transn rev due 7/1/17 | 3,000,000.00 | $3,100,620.00 |
| **Total** | **43,764,530.81** | **$49,342,462.98** |

## ATTACHMENT B

List of Securities held in Causey's First Union

Account No. 2005-0471:

| Description | Shares | Value as of 12/31/2003 | Type |
|---|---|---|---|
| Evergreen FBO Hedge Equities | 2,719.67 | $ 48,294.48 | Mutual Fund |
| Clark Cnty Wash Pub Util Dist #001 Generation Sys dtd 12/1/00 FC 07/01/01 | 250,000 | $280,537.50 | Bond |
| District Columbia CTFS Partn Dists Pub Safety & Emergency cpn 4.75% | 100,000 | $100,792.00 | Bond |
| E-470 Pub Hwy Auth Colo Rev Sr Ser A dtd 08/01/97 fc 03/01/98 | 120,000 | $122,124.00 | Bond |
| Elgin Ill Corp Purp G/O Unltd dtd 05/01/00 fc 01/01/01 | 100,000 | $112,117.00 | Bond |

| **Description** | **Shares** | **Value as of 12/31/2003** | **Type** |
|---|---|---|---|
| Harris Cnty Tex Ref Toll 5.125% | 275,000 | $297,896.50 | Bond |
| Harris Cnty Tex Ref Toll 5.000% | 225,000 | $235,219.50 | Bond |
| Howell Mich Pub Schs Ref G/O Unltd OID dtd 02/07/01 fc 11/01/01 | 250,000 | $264,007.50 | Bond |
| Huntsville Ala Health Care Auth Ser A B/E MBIA dtd 11/15/97 fc 06/01/98 | 100,000 | $109,310.00 | Bond |
| Lyon Cnty Nev Sch Dist Permanent Sch dtd 02/01/01/ fc 06/01/01 | 200,000 | $223,854.00 | Bond |
| Phoenix Ariz Civic Impt Corp Wstewtr Sys dtd 10/01/93 fc 01/01/94 | 275,000 | $284,586.50 | Bond |
| Rhode Island St & Providence | 225,000 | $247,887.00 | Bond |

| Description | Shares | Value as of 12/31/2003 | Type |
|---|---|---|---|
| Plantation Ctfs dtd 12/01/00 dfc 04/01/01 | | | |
| Texas St Wtr Dev - Ser E & F dtd 08/01/97 fc 02/01/98 | 250,000 | $262,395.00 | Bond |

# APPENDIX D

## DECLARATION OF PHILIP ANTHONY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | ) | Crim. No. H-04-25 |
| | ) | (Lake, J.) |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| JEFFREY K. SKILLING and RICHARD A. CAUSEY, and KENNETH LAY, | ) | |
| | ) | |
| Defendants. | ) | |

## DECLARATION OF PHILIP K. ANTHONY, PH.D, IN SUPPORT OF DEFENDANT JEFFREY SKILLING'S MOTION TO TRANSFER VENUE

## QUALIFICATIONS

1. I am Chief Executive Officer of DecisionQuest, Inc. of Los Angeles, California. All of the matters set forth herein are within my personal knowledge. If called as a witness in this action, I could and would testify competently to the matters contained herein.

2. In addition to Los Angeles, DecisionQuest has offices in Newport Beach, Chicago, Dallas, Houston, Jacksonville, Pennsylvania, New York, Boston, Washington DC, Atlanta, Louisville, Phoenix, and Minneapolis.

3. At the request of counsel for Jeffrey Skilling, and under my direction, DecisionQuest conducted a statistical survey in four venues (Atlanta, Houston, Denver, Phoenix) to determine (i) potential jurors' exposure to media coverage of the Enron bankruptcy and the defendants in this case; (ii) potential jurors' perceptions about the economic impact the bankruptcy had on and in their respective communities: (iii) the presence, if any, of animus toward Mr. Skilling personally; and (iv) the existence, if any, of verdict predisposition against the defendants in this case.

4. DecisionQuest is a firm engaged in the business of understanding the social and psychological processes involved in juror behavior. DecisionQuest maintains a full-time staff of Ph.D. specialists in psychology, social psychology, sociology, communication sciences, statistics,

computer analysis, and research design. DecisionQuest assists attorneys in understanding the biases, prejudices, and perceptions that jurors bring with them into the courtroom.

5. The principals of DecisionQuest have conducted research in more than 10,000 civil and criminal cases throughout the United States and abroad. Over the last 20 years, we have frequently been asked to analyze venue questions, particularly to determine a party's ability to obtain a fair trail in a given venue.

6. I hold a doctorate in Communication Science from the University of Southern California. I am the former Vice Chairman, Chief Financial Officer, and a founding shareholder of Litigation Sciences, Inc., a trial consulting firm specializing in jury research and with which firm I was associated for more than 10 years. I have been personally engaged in jury consulting work for more than 25 years and have advised lawyers and their clients regarding more than 1,000 jury cases in all 50 states. Attached hereto as exhibit 1 is a true and correct copy of my curriculum vitae.

7. I am a member of the American Psychological Association, Division 1 (General Psychology) and Division 41 (Psychology and Law).

8. I am the author of numerous publications on the topics of jury psychology and litigation and trial procedures, including: Social Science Research

Methods for Litigation (Michie Publication, 1984) (with Donald E. Vinson); Strategies and Techniques of Psychology in Jury Trials, in Civil Trial Practice (Practicing Law Institute, 1986); and "New Techniques in Trial Consulting and Jury Research Available to the Corporate Litigant," in International Legal Strategy (Fall 1994) (with John E. Kidd and John E. Daniel). DecisionQuest maintains an ongoing research program to support the firm's publication efforts.

9. I have made numerous presentations concerning the application of social science strategies and techniques in litigation to, among others, the American College of Trial Lawyers, The National Institute on Trial Advocacy, the Association of Business Trial Lawyers, and a large number of state bar associations.

10. I have been interviewed and quoted on the subject of trial strategy by, among others, the CBS Evening News, NBC News, National Public Radio, The Wall Street Journal, The Los Angeles Times, The New York Times, Time Magazine, Reuters, MSNBC, Report Business on Television (Canadian TV), U.S. News & World Report, The Christian Science Monitor, USA Today, CNN.com, Business Week, and The Rocky Mountain News.

11. In the following paragraphs, I shall:

   a. identify the "Principal Findings" of the statistical survey ("Principal Findings");

   b. discuss the methodological protocol under which the study was conducted, including an explanation of sampling and interviewing techniques, descriptions of the venires polled, and a run-through of the questionnaire itself, as well as the statistical analyses employed ("Survey Methodology"); and

   c. provide more detailed analyses to support the statements and opinions rendered in the Principal Findings section ("Discussion/Analysis").

## PRINCIPAL FINDINGS

12. Below is a table summarizing the data from the four substantive questions in the statistical survey.

| | **Houston** | **Phoenix** | **Denver** | **Atlanta** |
|---|---|---|---|---|
| (sample size) | (773) | (798) | (782) | (805) |
| Q4:* Please name all the former top executives of Enron who you believe are guilty of crimes. | | | | |
| ("Jeffrey | 95 | 11 | 21 | 21 |

| | | | | |
|---|---|---|---|---|
| Skilling") | (12.3%) | (1.4%) | (2.7%) | (2.6%) |
| (Other Enron Executives) | 287<br>(37.1%) | 139<br>(17.4%) | 177<br>(22.6%) | 150<br>(18.6%) |
| Q5: What words come to mind when you hear the name Jeff Skilling? | | | | |
| (# of Negative Respondents) | 246<br>(31.8%) | 72<br>(9.0%) | 86<br>(11.0%) | 106<br>13.2%) |
| (# of Prejudicial Words) | 538 | 156 | 196 | 201 |
| (# of Anger Words) | 97 | 17 | 29 | 21 |
| Q6: Do you personally know anyone who has been harmed by what happened to Enron? | | | | |
| ("Yes") | 254<br>(32.9%) | 94<br>(11.8%) | 94<br>(12.0%) | 129<br>(16.0%) |
| Q7: In your opinion, was the economy of the [interviewee's venue] area affected more by the collapse of Enron than other cities in the U.S.? | | | | |
| ("Yes") | 539<br>(69.7%) | 61<br>(7.6%) | 75<br>(9.6%) | 96<br>(11.9%) |

* As explained more fully in paragraph 33(a), *infra*, Questions 1-3 were used to screen respondents for eligibility to participate in the survey.

13. The survey was designed to assess certain perceptions and feelings among jury-eligible individuals in four federal district venues: Houston; Phoenix; Denver; and Atlanta. Each venue is comprised of several counties, as defined by the rules of each respective district court. See ¶ 32, *infra*. The survey's four questions were designed to test respondents':

- level of familiarity with Enron and its chief executives (Questions 4, 6);
- perceived community victimization (Questions 6, 7);
- animus toward Mr. Skilling (Question 5); and
- predisposition against Mr. Skilling and his co-defendants (Questions 4, 5, 6, 7).

Attached as exhibit 2 is a true and correct copy of the questionnaire used in the survey.

14. Responses to this survey consistently and overwhelmingly demonstrate that jury-eligible individuals in Houston are significantly more familiar with details about Enron and Mr. Skilling than their counterparts in the other three venues studied. For example, Question 4 asked respondents to identify "all former top executives of Enron who you believe are guilty of crimes." On an *unaided*

basis (this means without any prompting of the subjects' memories with a list of names, positions or similar information), respondents in Houston were at least *twice* as likely as respondents from the other three venues to identify an Enron executive, and at least *four times* as likely as respondents from the other venues to identify Mr. Skilling as a "guilty" Enron executive. *See* Discussion/Analysis of Question #4 at ¶¶ 38-39, *infra*.

15. Houston venue respondents feel more victimized by the collapse of Enron and the perceived actions of Mr. Skilling than their counterparts in Phoenix, Denver, and Atlanta. For example, Question 7 asked: "In your opinion, was the economy of the [interviewee's venue] area affected more by the collapse of Enron than other cities in the U.S.?" Nearly *70 percent* (69.7%) of Houston-area respondents believe that their economy was affected more by the collapse of Enron than were the economies of other U.S. cities. Houston respondents were more than *nine times* as likely as Phoenix respondents, *seven times* as likely as Denver respondents, and almost *six times* as likely as Atlanta respondents to respond affirmatively. *See* Discussion/Analysis of Question #7 at ¶ 41, *infra*. Moreover, Houston respondents are between *two and three times* more likely than respondents from the other three venues to personally know somebody who has been harmed by what happened to Enron. *See* Discussion/Analysis of Question #6 ("Do you know anybody who was personally harmed by what happened to Enron?") at ¶ 40, *infra*.

16. Jury-eligible individuals in Houston exhibit significantly more animus toward Mr. Skilling than their counterparts in the other three venues studied. Question #5 asked on an unaided basis: "What words come to mind when you hear the name Jeff Skilling?" On average, Houston respondents were *three times* more likely to provide a negative response than their counterparts from the other three venues, and were approximately *four times* as likely to express their feelings with words of "anger." See Discussion/Analysis of Question #5 at ¶ 42, *infra.*

17. Houston respondents were by far the most vitriolic when describing Mr. Skilling. Although not exhaustive, below is a table setting forth a representative subset of emotionally charged Houston responses. Attached as exhibit 3 is a true and correct copy of the verbatim responses to Question 5 for all 3,158 interviewees in the four venues studied.

## TABLE OF REPRESENTATIVE HOUSTON RESPONSES TO QUESTION 5

| | |
|---|---|
| "Pig. Snake. A snake is slithery and sneaky. A pig is dirty. Anybody that would do what he did is dirty." | "Jeff Skilling is a crook. All the Enron executives were white collar crooks. Enron was the most deceitful company in US history." |

| | |
|---|---|
| "Evil. That he is an evil person." | "Crook, asshole, no good, thief. I think he swindled a lot of people." |
| "He is the devil. He is a sorry son of a gun [sic] who is only out for himself." | "The words bad person comes to my mind when I hear the name Jeff Skilling, Those people at Enron stole a lot of money from us teachers and bought themselves nice homes and cars and took it from our investments. Now we have nothing in the accounts we invested in for our retirement. I think they should all be hanged." |
| "I have only two words to explain all of the people involved in Enron and I will not expand further: economic terrorists." | "Liar. Lecherous. Fraud. Thief. He stole from employees. He stole their pension plans. He is not an honest man. He is a crook and a criminal." |
| "Extortion is what I think of. I mean financial fraud." | "He is a sad story. He is cornered, and he has a deer caught in the headlights look on his face. He is guilty, he knows it, and he got |

| | |
|---|---|
| | caught. He can no longer hide it. The evidence that was dug up from public records is more than enough to convict him. He cannot have a position like chief executive officer and not know what is going on with the company." |
| "Crook, asshole, no good, thief. I think he swindled a lot of people." | "They should prosecute him to the fullest, they knew what was going on and should get as much time in the penitentiary as possible." |
| "Jeff Skilling is an arrogant, conniving, pompous, brilliant crook. That should about cover it." | "Jeff Skilling is guilty. My company went bankrupt because of its connection with Enron." |

| | |
|---|---|
| The word that comes to mind when I hear the name Jeff Skilling are greedy and greedy crook. Guilty comes to mind because I feel that he did what he did and that deprived elderly people of their pensions. I am elderly. I know how awful it would be to lose the pension you depend on. Hurting that many elderly people so severely is, I feel, the equivalent of being an axe murderer. His actions were just as harmful as an axe murder to the [community]. If I were on the jury, I would send him to jail because he is so guilty. I also think he is a greedy crook. I think because he acted in a dishonest manner. He was dishonest because he wanted money and he simply took for others or the law." | "The words bad person comes to my mind when I hear the name Jeff Skilling. Those people at Enron stole a lot of money from us teachers and bought themselves nice homes and cars and took it from our investments. Now we have nothing in the accounts we invested in for our retirement. I think they should all be hanged." |

18. Based on my experience as a jury consultant, it is unusual to find as high a level of awareness of and animus toward a specific corporate executive as we find in the Houston venue with respect to Mr. Skilling. Furthermore, the quality, extent, and tenor of responses to the open-ended question by Houston respondents are normally reserved for settings in which, prior to asking the question, the research protocol would have provided the respondent with substantially more information – such as the individual's former job title or association with a particular company – than was provided in the one-line question used in the present study.

19. Given the high Houston levels of familiarity and animosity, it is not surprising that Houston respondents are *nine times* more likely than Phoenix respondents and *four times* more likely than Denver or Atlanta respondents to have already prejudged Mr. Skilling as guilty. See Discussion/Analysis of Question #4 at ¶ 38, *infra.*

20. In light of these results (as well as other factors discussed below), it is my opinion as a jury consultant that traditional or individualized voir dire would not be effective to weed out from the jury pool the significant number of jurors who harbor a conscious or subconscious bias against Mr. Skilling. In my experience, jurors with a subconscious bias may believe they can be fair, but, when probed in settings outside of the courtroom context (such as in post-trial interviews or jury research settings), they

reveal that no amount of evidence would have changed the preconceived notions with which they entered the courtroom. Without even realizing it, they will act on their biases and render a verdict based solely on their preconceptions and without regard to the evidence.

21. Even if eligible jury members in Houston who have prejudged Mr. Skilling as guilty could be readily identified and excluded from the jury, a significant risk would nevertheless exist that an ostensibly non-predisposed Houston jury will feel pressured to convict Mr. Skilling and his co-defendants to comport with what is expected of them by an angry Houston community that perceives itself as having been victimized by Enron's collapse. Jurors in Phoenix, Denver, or Atlanta will not feel the same pressure to convict because their respective communities do not feel the same sense or intensity of victimization as the Houston venue community, and will not view as social pariahs the 12 people who vote to acquit Mr. Skilling and his co-defendants.

22. In light of these responses, it is my opinion that Mr. Skilling would not and could not receive a fair trial in Houston because such an overwhelming number of jury-eligible citizens harbor deep-seated animus, particularly when other venues exist in which jury eligible citizens appear substantially less biased. Indeed, the data collected in the Houston, Phoenix, Denver, and Atlanta venues support the general observation that virtually any venue other than Houston would be a less hostile place in which

to try Mr. Skilling.

23. In addition to the foregoing empirical findings, there are a variety of other factors that will likely negatively affect and further decrease the ability of a Houston jury to view Mr. Skilling's case without bias and prejudice.

24. So-called "stealth jurors" are individuals motivated to serve on a jury to pursue a hidden agenda, such as a desire for fame, a desire to profit from telling their stories publicly, or even a desire to see their points of view vindicated. In 2001, DecisionQuest conducted a survey of trial lawyers who subscribe to our electronic newsletter. Of the 163 respondents, 44% had actual experience where they had encountered a stealth juror. Of those familiar with the concept, 60% said they think there were more stealth jurors than in the past, and two-thirds said that the increase had occurred over the past five years. Attached as exhibit 4 is a July 31, 2001 article from *The Wall St. Journal* referring to this study.

25. In conjunction with this survey of trial lawyers, DecisionQuest also conducted a nationwide survey of more than 1,000 jury-eligible adults. Twenty-five percent of those polled stated that they could envision a situation where they may wish to serve on a jury, and 14% said they would be willing to conceal information about themselves in order to be assigned to a high-profile case. *See* Exhibit 4. Voir dire is much less likely to identify "stealth

jurors" who actively conceal their improper motives for seeking a place on the jury.

26. A related phenomena is the willingness of the jury populus to substitute its own sense of morality over and above the instructions provided by the judge. For example, in our 1999 Annual Juror Outlook Survey, conducted in conjunction with *The National Law Journal*, we asked more than 1,000 respondents if they agreed with this statement: "Juries should ignore a judge's instructions if they believe justice will best be served by doing so." Nearly half (48.8%) agreed with that statement. Attached as exhibit 5 is the November 1, 1999 article in *The National Law* Journal referenced above.

27. This is borne out by our surrogate juror research. We routinely ask participants in our surrogate jury deliberations a question along the lines of "If you were a juror and what you thought was morally inconsistent with the law, would you a) follow the law, or b) follow your moral judgment?" The responses are typically 50/50, sometimes being 60/40 or 40/60. So in general, we can say that roughly half of jury-eligible citizens would be willing to substitute their own sense of morality over the law as instructed by the judge.

28. Although the survey undertaken in this case did not probe directly respondents' desire to serve on the jury of Mr. Skilling's criminal trial or whether respondents would consider an acquittal of Mr. Skilling to be "morally inconsistent" with their

views, the survey's results provide indirect evidence on both scores. The overpowering sense of victimization in Houston and the extraordinary level of animus in response to hearing Mr. Skilling's name suggest that (i) stealth jurors in Houston will be more proactive than stealth jurors in other venues to try to get on the jury, even if that means providing misleading answers on voir dire; and (ii) the Houston venue community at large is more likely than the communities of the other venues to view an acquittal of Mr. Skilling and his co-defendants as morally wrong.

29. These same factors likewise differentiate the position of Mr. Skilling and his co-defendants from that of Sheila Kahanek, a former Enron employee who was recently acquitted by a Houston jury in another Enron-related trial. From press accounts, I understand Ms. Kahanek to be a mid-level accountant who was employed by Enron for a relatively short period of time prior to her involvement in the single allegedly fraudulent transaction with which she was charged. That Ms. Kahanek was acquitted does not change my conclusions about the inability of Mr. Skilling to receive a fair trial in Houston. Given the intense level of animus in response to hearing Mr. Skilling's name that we found in Houston, the acquittal is irrelevant because:

- Assuming that Ms. Kahanek was not well known before her trial (which appears likely given the reported facts of her case), there is no reason to believe that jury-eligible citizens in Houston would harbor the same demonstrated deep-seated animus against her that they do against a high-profile defendant like Mr. Skilling (who is closely associated with Enron in the minds of potential Houston jurors). As noted above, it is unusual for us to find as high a level of awareness of and animus toward a specific corporate executive as we found in Houston with respect to Mr. Skilling.

- A Houston jury may have been willing to acquit a low-level employee accused of being involved in a single allegedly fraudulent transaction, but that does not undermine our findings that jury-eligible citizens hold Mr. Skilling and his co-defendants responsible for the entire collapse of Enron.

- Given the limited involvement and lower public profile of Ms. Kahanek, it is much less likely that there would be as strong of a pressure to convict or as significant of an incentive for "stealth jurors" to try to get on the jury in her case (although such factors might have contributed to the conviction of the other, higher-profile defendants with whom she was tried).

## SURVEY METHODOLOGY

30. Counsel for Mr. Skilling asked DecisionQuest to conduct a community attitude telephone survey of registered voters from 4 metropolitan venues: Houston, Texas; Atlanta, Georgia; Denver, Colorado; and Phoenix, Arizona. DecisionQuest conducted that survey between October 7 and October 20, 2004.

31. This Survey Methodology section is broken down into four parts: Sampling and Interviewing; Inspection and Supervision of Telephone Operating System; Survey Questionnaire; and Statistical Analyses.

32. Sampling and Interviewing.

a. Residents from the following four venues were contacted via telephone:

- Northern District of Georgia, Atlanta Division: Cherokee; Douglas; Newton; Clayton; Fulton; Rockdale; Cobb; Gwinnett; De Kalb; and Henry counties;

- Southern District of Texas, Houston Division: Austin; Fort Bend; Montgomery; Wharton; Brazos; Grimes; San Jacinto; Colorado; Harris; Walker;

Fayette; Madison; and Walker counties;

- District of Colorado, Denver Division: Adams; Chaffee; Elbert Park; Lake; Park; Teller; Arapahoe; Clear Creek; Gilpin; Larimer; Philip; Washington; Boulder; Denver; Grand; Logan; Sedgwick; Weld; Broomfield; Douglas; Jefferson; Morgan; Summit; and Yuma counties;

- District of Arizona, Phoenix Division: Gila; Yuma; La Paz; Maricopa; and Pinal counties.

b. We sampled the counties proportionately within each district based on the population within each county.

c. We ordered and dialed an RDD A 1 + sample in replicates of 100 telephone numbers each. We dialed each phone record within each replicate up to 4 times. We briefed the study with a DecisionQuest representative present, and the representative monitored several interviews for each interviewer on this study. We dialed both weekdays and weekend days and at all different times of the day, but no earlier than

10:00 AM respondent time and no later than 9:00 PM respondent time.

d. The sample was obtained by Bernett Research, a firm DecisionQuest regularly uses to perform such work. Bernett Research assured DecisionQuest that the sampling techniques used met the methodological standards necessary for academic and legal research, and that they sampled the venues in question according to DecisionQuest's specifications.

e. In the Atlanta counties, we completely dialed through 265 replicates and completed 805 surveys. In the Houston counties, we completely dialed through 199 replicates and completed 773 surveys. In the Denver counties, we completely dialed through 162 replicates and completed 782 surveys. In the Phoenix counties, we completely dialed through 199 replicates and completed 798 surveys.

f. Jury eligibility was ensured by asking the participants whether they were U.S. citizens, 18 years of age or older, residents of the venue in question, and registered to vote.

33. Inspection of Telephone Surveying Operation. At my direction, Robert F. Bettler, Jr., Ph.D. (a senior research analyst at DecisionQuest who specializes in statistical analysis) visited the Bernett Research calling center in Pocatello, Idaho, on October 7 and 8, 2004 to personally oversee the polling portion of the survey. As part of this inspection, Dr. Bettler:

- Reviewed the training and operation manuals used to train the interviewers and guide their interviewing procedures;

- Attended the initial training session for interviewers involved in this project;

- Ascertained from this initial training session that nothing in the training revealed to the interviewers the purpose of this research;

- Interviewed managers, supervisors, and programmers at all levels of the organization regarding methodological issues (without discussing with Bernett personnel the exact purpose of this research);

- Randomly monitored several hours of live calls; and

- Randomly monitored call supervisors and quality controllers. Bernett managers informed us that they randomly monitor 10% of all completed interviews for quality control purposes and this operation was observed by Dr. Bettler.

In all the above operations, to the best of Dr. Bettler's knowledge and experience, Bernett Research fulfilled its functions to the methodological standards for this type of research.

34. Survey Questionnaire (Exhibit 2)

a. The questionnaire was broken down into two parts. Questions 1 - 3 assessed survey eligibility by asking the respondent questions about residence and eligibility to vote. Questions 4-7, set forth below, comprised the "substance" of the survey:

- Question #4: Please name all of the former executives of Enron who you believe are guilty of crimes.

- Question #5: What words come to mind when you hear the name, Jeff Skilling?

(Questions 4 and 5 were open-ended to minimize any demand characteristics, *i.e*, tendencies for respondents to follow the interview's cues towards a "right" answer.)

- Question #6: Do you personally know anyone who has been harmed by what happened to Enron?

- Question #7: In your opinion, was the economy of the [interviewee's venue] area more affected by the collapse of Enron that other cities in the United States?

b. Responses to the questions were categorized in the following ways:

- Responses to Question 4 were put into three categories: Jeffrey Skilling, Other Enron Executives, and None/Refused to Answer.

- Responses to Question 5 were identified as a zero (0) for a neutral or positive utterance or if the respondent declined to offer a response, and a one (1) if the comment was negative. Dr. Bettler categorized the responses conservatively. For example, the response "has been indicted" was rated a zero, or non-negative. In contrast, the response "cooking the book" was rated a one.

- Responses to Questions 6 and 7 were categorized as Yes, No, or Don't Know/Refused to Answer.

c. The survey questions and response categories were designed to probe the respondents' actual attitudes and opinions in a scientifically objective fashion.

d. Care was taken not to "load" the questions and response options so as to "lead" respondents into providing a particular answer.

35. Statistical Analyses.

a. Chi-square analyses were conducted to determine whether residents of the four venues differed to a statistically significant degree with respect to four data points (from Questions 4, 6, 7):

- Question #4: number of free mentions of Mr. Skilling.

- Question #4: number of free mentions of other Enron executives.

("Free mentions" means the interviewer did not supply the respondents with any hint or clue as to the "correct" answer, but simply asked the respondents whom, if anyone, they believed to be guilty Enron executives.)

- Question #6: number of affirmative responses for whether the respondents personally knew anyone who has been harmed by what happened to Enron.

- Question #7: number of affirmative responses for whether the respondents believed the economies of their venues had been affected more by the collapse of Enron than other cities in the United States.

b. This chi-squared test used in these analyses is well suited for comparative analyses like those requested here -- *i.e.*, comparing the response rate of one venue versus the response rate of another venue. The assumptions and requirements for this test have been met.

c. With respect to Question #5 -- what words come to mind when you hear the name Jeffrey Skilling -- DecisionQuest conducted a content analysis (i) to determine the total number of respondents from each venue who provided at least one negative descriptive word in response; and (ii) to determine, by venue, the total word count, the total number of prejudicial words used, and the total number of "anger" words used (as defined by the recognized software program designed by social science researchers Pennebaker and Finch).

## DISCUSSION/ANALYSIS

36. The Discussion/Analysis section is set forth in the following format: each numbered paragraph corresponds to a topic covered -- venue representation or a particular survey question. Subparagraph (a) sets forth a table of the results for that topic or question. Subparagraph (b) summarizes the salient results from the data.

37. Venue representation.

a. Data Table:

| Respondents Surveyed | | Total |
|---|---|---|
| VENUE | Houston | 773 |
| | Phoenix | 798 |
| | Denver | 782 |
| | Atlanta | 805 |

b. Results: Representation across the four venues is balanced, with approximately one-quarter of the total number of respondents residing in each. Although not strictly required for the statistical analyses, this balance does enhance the statistical validity of the analyses of venue differences to follow. Additionally, in sampling research, more respondents corresponds to a lower potential error rate and a higher level of confidence. Here, 800 respondents is a large sample for this type of survey and gives our results a margin of error of +/- 3.46% at a 95% confidence level.

38. Question 4: "*Please name all the former Enron executives you know of who are guilty of crimes.*"

a. Data Table for responses of "Jeffrey Skilling"

| "Jeffrey Skilling" | | | Did Not Mention Skilling | Mentioned Skilling | Total |
|---|---|---|---|---|---|
| VENUE | Houston | Count | 678 | 95 | 773 |
| | | % within VENUE | 87.7% | 12.3% | 100.0% |
| | Phoenix | Count | 787 | 11 | 798 |
| | | % within VENUE | 98.6% | 1.4% | 100.0% |
| | Denv | Count | 761 | 21 | 782 |

| | | | | | |
|---|---|---|---|---|---|
| | er | % within VENUE | 97.3% | 2.7% | 100.0 % |
| | Atlanta | Count | 784 | 21 | 805 |
| | | % within VENUE | 97.4% | 2.6% | 100.0 % |
| Total | | Count | 3010 | 148 | 3158 |
| | | % within VENUE | 95.3% | 4.7% | 100.0 % |

Pearson Chi-Square(df=3)=134.381, p=.000

b. Results:

- The proportion of residents mentioning Mr. Skilling in the Houston venue (12.3%) was almost five times higher than in Denver (2.7%) and Atlanta (2.6%), and nine times higher than in Phoenix (1.4%).

- A total of 12.3% of Houston residents mentioned Mr. Skilling freely when asked which Enron executives came to mind, while in Denver only 2.7% did so. Stated differently, of all the mentions of Mr. Skilling (see total count near the bottom of the table), 64.2% (95/148x100%) of them came from Houston residents. The strong statistical significance of this finding (p=.000, i.e., much less than p=.05 which is the customary

- Although, a recall rate of 12.3% may seem low, one of the strongest conclusions from human memory research is that relatively free, uncued recall of this sort is the most difficult of memory retrieval tasks. If a less conservative approach had been used, one for example that supplied the respondents with a list of names, then memory retrieval may have been many times higher.

- In fact, this is what occurred in Question #5 (discussed below). When respondents were asked "what words come to mind when you hear the name Jeff Skilling?," nearly one in three Houston venue respondents

(31.8%) not only recalled Mr. Skilling, but used negative or prejudicial words to describe him.

- It is noteworthy that even though the "Enron story" at one point was national in scope, less than 3% of respondents in Phoenix, Denver, or Atlanta identified Mr. Skilling in response to Question #4, compared to 12.3% in Houston. Similarly, between 9% and 13.5% of respondents from those three venues described Mr. Skilling negatively in response to Question #5, compared to 31.8% in Houston.

39. Question 4: "*Please name all the former Enron executives you know of who are guilty of crimes.*"

a. Data Table

| Other Enron | | Total |
|---|---|---|

| Executive | | | Mentioned Other Enron Executive | Did Not Mention Other Enron Executive | |
|---|---|---|---|---|---|
| VENUE | Houston | Count | 486 | 287 | 773 |
| | | % within VENUE | 62.9% | 37.1% | 100.0% |
| | Phoenix | Count | 659 | 139 | 798 |
| | | % within VENUE | 82.6% | 17.4% | 100.0% |
| | Denver | Count | 605 | 177 | 782 |
| | | % within VENUE | 77.4% | 22.6% | 100.0% |
| | Atlanta | Count | 655 | 150 | 805 |
| | | % within VENUE | 81.4% | 18.6% | 100.0% |
| Total | | Count | 2405 | 753 | 3158 |

| | | | | |
|---|---|---|---|---|
| | % within VENUE | 76.2% | 23.8% | 100.0% |

Pearson Chi-Square(df=3)=105.929, p=.000

b. Results: Houston-area residents also were disproportionately more likely than other respondents to mention the names of Enron executives other than Mr. Skilling. Of all the mentions of Enron executives' names, 38.1% (287/753x100%) of them came from Houston residents. As with the previous question, the strong statistical significance shows that the magnitude of the Houston recall rates over those in other venues are far beyond what would be expected by chance alone.

Question 6: "*Do you personally know anyone who has been harmed by what happened to Enron?*"

c. Data Table:

| Know Harmed Person | | | | Total |
|---|---|---|---|---|
| | Yes | No | Don't Know | |

| | | | | | | |
|---|---|---|---|---|---|---|
| VENUE | Houston | Count | 254 | 510 | 9 | 773 |
| | | % within VENUE | 32.9% | 66.0% | 1.2% | 100.0% |
| | Phoenix | Count | 94 | 681 | 23 | 798 |
| | | % within VENUE | 11.8% | 85.3% | 2.9% | 100.0% |
| | Denver | Count | 94 | 679 | 9 | 782 |
| | | % within VENUE | 12.0% | 86.8% | 1.2% | 100.0% |
| | Atlanta | Count | 129 | 660 | 16 | 805 |
| | | % within VENUE | 16.0% | 82.0% | 2.0% | 100.0% |
| Total | | Count | 571 | 2530 | 57 | 3158 |
| | | % within VENUE | 18.1% | 80.1% | 1.8% | 100.0% |

Pearson Chi-Square(df=6)=164.306, p=.000

d. Results: The proportion of residents in the Houston venue stating that they were personally familiar with someone who had been harmed by the events at Enron was disproportionately greater than in any other venue, 254 versus 129 in the next highest venue. Respondents in Houston were twice as likely as respondents in Atlanta and almost three times as likely as respondents in Denver and Phoenix to personally know someone who has been harmed by what happened to Enron. Statistically speaking, this is a strong finding and shows that the perceived social impact of these events to Houston residents is much greater than the perceived social impact in other parts of the country.

Question 7: *"In your opinion, was the economy of the [interviewee's venue] area affected more by the collapse of Enron than other cities in the United States?"*

e. Data Table:

| Greater Economic Harm | | | Yes | No | Don't Know/ Refused | Total |
|---|---|---|---|---|---|---|
| VE | Hous | Count | 539 | 123 | 111 | 773 |

| | | | | | | |
|---|---|---|---|---|---|---|
| NUE | ton | % within VENUE | 69.7% | 15.9% | 14.4% | 100.0% |
| | Phoenix | Count | 61 | 430 | 307 | 798 |
| | | % within VENUE | 7.6% | 53.9% | 38.5% | 100.0% |
| | Denver | Count | 75 | 415 | 292 | 782 |
| | | % within VENUE | 9.6% | 53.1% | 37.3% | 100.0% |
| | Atlanta | Count | 96 | 452 | 257 | 805 |
| | | % within VENUE | 11.9% | 56.1% | 31.9% | 100.0% |
| Total | | Count | 771 | 1420 | 967 | 3158 |
| | | % within VENUE | 24.4% | 45.0% | 30.6% | 100.0% |

Pearson Chi-Square(df=6)=1151.702, p=.000

f. Results: The number of residents in the Houston venue voicing the view that their own geographical region had been disproportionately harmed by the events at Enron was massively higher than in any other venue: 539 versus 96 in the next highest venue. A strong majority, almost 70% of Houston-area residents, feel their region has been harmed more than any other region in the country. Barely 10% in other parts of the country hold this view. The strong statistical significance of this result shows that the perceived "close-to-home" economic impact of the Enron case is much greater in the minds of Houston-venue residents than elsewhere in the country.

40 Question 5: "*What words come to mind when you hear the name Jeff Skilling?*"

a. Data Table:

| | Houston | Atlanta | Denver | Phoenix |
|---|---|---|---|---|
| Number of respondents | 775 | 805 | 782 | 798 |

| | | | | |
|---|---|---|---|---|
| Total word count (including inert words like "a" or "the") | 11,79<br>1 | 8,644 | 7,602 | 7,640 |
| Total number of respondents providing at least one negative response | 246 | 106 | 86 | 72 |
| Total number of prejudicial words used | 538 | 201 | 196 | 156 |
| Total number of anger words | 97 | 21 | 29 | 17 |

b. Results:

- Word Count: Houston respondents, though fewest in number compared to the other three venues surveyed, were more loquacious in describing their feelings toward Mr. Skilling. On average, they uttered 1.4 times more words than were uttered in the venue with second highest word count, Atlanta (11,791 versus 8,644).

- Negative Views: Houston respondents were far more likely than respondents in other venues to describe Mr. Skilling negatively. The number of Houston respondents providing at least one negative descriptive word was 3.4 times higher than Phoenix, 2.9 times higher than Denver, and 2.3 times higher than Atlanta. Attached as exhibit 6 is a listing of and frequency breakdown by venue for negative words uttered by respondents in all venues.

- Anger: In order to corroborate the above findings and to guard against subjectivity in the determination of the prejudicial word list, a word frequency analysis was also conducted using a list of target words constructed by independent researchers. This analysis utilized a lexicon of anger-related words devised by the noted social science researchers Pennebaker and Francis. Focusing purely on the words indicative of anger in the interviewees, it was found that the Houston respondents were 5.9 times more likely than Phoenix respondents, 4.8 times more likely than Atlanta respondents, and 3.4 times more likely than Denver respondents to provide a word response indicative of anger. Attached as exhibit 7 is a listing of anger words, as defined by Pennebaker and Finch.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 11, 2004 in Torrance, California.

s/Philip K. Anthony
Philip K. Anthony

Tab 2

## DQ Telephone Survey:

**Intro** – Hello, my name is __________ and I am calling on behalf of Bernett Research. Today we are gathering people's opinions on different topics that could affect you. This is not a sales call and the exercise should take only a couple minutes of your time.

Q1 – Are you at least 18 years old?
– yes
– no / refused (thank and term)

Q2 – Are you a resident of the state of [insert relevant state]?
– yes
– no / refused (thank and term)

Q2a – In what county do you live? (Do not Read List)
– See county sheet. If county is not listed, thank and term.
– Refused (thank and term)

Q3 – Are you a registered voter?
– yes
– no / refused (thank and term)

Gender (Record By Observation):
Male
Female

"The executives of Enron corporation have been accused of mismanaging the company.

The executives now face criminal charges and will be brought to trial."

Q4 – Please name all of the former executives of Enron who you believe are guilty of crimes. (Do No Read List) (Do not clarify for exact response)
A1 – Jeff Skilling
A2 – Other (i.e., Kenneth Lay; Andrew Fastow)
A3 – Cannot name any

Q5 – What words come to mind when you hear the name Jeff Skilling?
Record all open-ended responses. If answers are broad, please ask respondent to clarify.

Q6 – Do you personally know anyone who has been harmed by what happened to Enron?
A1 – Yes
A2 – No
A3 – Record "Don't Know" responses (Don't Read)

Q7 – In your opinion, was the economy of the (insert relevant city name) area affected more by the collapse of Enron than other cities in the United States?
A1 – Yes
A2 – No
A3 – Don't Know/Refused

That is the end of this survey. Thank you for your participation.

County Sheet (by venue):

Houston-
Austin
Brazos
Colorado
Fayette
Fort Bend
Grimes
Harris
Madison
Montgomery
San Jacinto
Walker
Waller
Wharton

Phoenix-
Gila
La Paz
Maricopa
Pinal
Yuma

Denver-
Adams
Arapahoe
Boulder
Broomfield
Chafee
Clear Creek
Denver
Douglas
Elbert Park
Gilpin
Grand
Jefferson
Lake
Larimer
Logan
Morgan
Park
Phillips
Sedgwick
Summit
Teller
Washington
Weld
Yuma

Atlanta-
Cherokee
Clayton
Cobb
DeKalb
Douglas
Fulton
Gwinnett
Henry
Newton
Rockdale

Tab 3

| | **Houston** |
|---|---|
| # | Response |
| 1 | He was an Enron executive. I guess, criminal behavior. Theft. He illegally channeled funds to his own stuff. He stole from the employees and the stock brokers. He channeled funds to his own behalf, illegally. |
| 2 | The only word that comes to mind is Enron. Just that he was a participant with the Enron scandal. |
| 3 | I do not know Jeff Skilling. |
| 4 | There are no words that come to mind. I do not know who or am familiar with who that is. I have no comment. |
| 5 | Crooked, greedy and dishonest are some words that come to mind.He did whatever he wanted to to to make himself money. He figured that everything was fair as long as it made him money. |
| 6 | I just know that he was one of the Enron executives. |
| 7 | Crook. He was taking advantage of his employees for his own personal gain. They knew what they were doing all along and thought they could get away with it, but they did not. I think it is very sad that people try to do things like this to good people for their own wealth and greed. |

| | **Houston** [illegible] |
|---|---|
| 8 | I think of greed, as with most of them. I think when you take things that do not belong to you and when you give yourself bonuses that are not earned, that is greed. |
| 9 | The words that come to mind are crook, and greedy. He is just underhanded by taking more money then he needs to. |
| 10 | Nothing, I do not know the guy. |
| 11 | Jeff Skilling, I believe he was the CEO of the company. I think he is not guilty, he did not know what was going on in the system. There were a lot of secrets going on. |
| 12 | He is guilty too. I think they are all guilty. |
| 13 | Crook, a**hole, no good, thief. I think he swindeled a lot of people. |
| 14 | He was president of Enron. He was the Cheif Executive Officer, or the president. He was Fastow's boss. He may or may not be guilty. |
| 15 | I do not know Jeff Skilling. |
| 16 | Jeff Skilling is a crook. All the Enron executives were white-collar crooks. Enron was the most deceitful company in U.S. history. |

| | Houston [redacted] |
|---|---|
| 17 | That he cooked the books. He just changed the numbers in the books to make it look like they were making more then they really were. |
| 18 | I do not believe the owner is guilty. That is all. |
| 19 | He was one of the guys brought to justice from Enron. They were caught for stealling money and commmitting purjury. |
| 20 | Criminal. Crook. Greedy. I guess he know what he was doing was wrong and he did it anyway. He took money that was not his. He was greedy. I do not know. Greedy is just an obviouse word to me. |
| 21 | Guilty. He is one of the people who worked for Enron. Ken Lay was aware of everything that was going on in the company. Jeff Skilling was one of the people who participated in the scams at Enron. I also think Enron was affiliated with the Bush administration, and the government knew about everything that was going on. Dick Cheney never released the names of the people that he had the energy meeting with and I believe Enron was part of that. What those people did to the employees on Enron was sad. By encouraging these people to invest in a company that would go bankrupt and allowing them to believe they could trust this company was extremely dishonest. |

| | **Houston** [redacted] |
|---|---|
| 22 | That he is a money grubber. |
| 23 | I do not have a positive image of Jeff Skilling, I think he should be tried. |
| 24 | He is a liar and a thief. It is obvious what he did, he just has no compassion for anyone but himself. |
| 25 | I do not know. |
| 26 | I do not know him. |
| 27 | Deceitful, manipulative, smart, amoral, I believe he intentionally misguided peopl with out wanting to take the blame. He was in front of a committee saying he does not know how things run. He is a CEO and graduated from Harvord. How can he be a CEO and not know things? He either needed to flunk out of Harvord or not be a CEO. He and Andrew Foster worked together to drive stock up and thought it would be a fountain of money. He knew ti would not work and got out. I know because I worked with businesses like Enron and when Jeff Skilling saw the signs that it would not work he bailed. |
| 28 | He was connected to Enron. |

| | **Houston** |
|---|---|
| 29 | That man should be prosecuted. I think he lied. I think he took advantage of his employees. I think he took advantage of the American people. What gives him the right to not live by the morals and values everyone else lives by? |
| 30 | I do not know. None come to mind. |
| 31 | Nothing, I have no opinion. |
| 32 | He is one of the names that I keep hearing in the news. It is just associated with all the news about Enron. I do not know which one was the chief accountant. |
| 33 | Enron. I just think about the whole Enron scandal thing. |
| 34 | That he is being looked into. We will wait and see what happens. I try to keep an open mind. |
| 35 | I do not know who that is. |
| 36 | I do not know anything about him. |
| 37 | The name sounds familiar, but I can not place it. |
| 38 | I will not comment. |
| 39 | i do not even know who he is. |

| | **Houston** [redacted] |
|---|---|
| 40 | Jeff Skilling is a crook. |
| 41 | No words come to mind. |
| 42 | I do not know, he might be some big executive. |
| 43 | I think he was the mastermind. He knew in advance something was wrong so he bailed out. He created an image of a sharp skilled person who was part of the success of Enron. Then he left six months before without a reason. He knew who was involved with Fastow. I think his part of the money was not deserved. There were employees, people, who were smaller than him who deserved the money. He did not deserve what he made. |
| 44 | He was the ex-president. He was very involved. I do not know that he has even been indicted yet. Actually, I guess he has been indicted. He left his position way before the collapse happened, about nine months before the actual collapse. He is a very smart, intelligent guy. |
| 45 | He has been in the news and on television. I do not have enough information to say if he is guilty or not. |
| 46 | I am not familiar with who that is. |
| 47 | All I know is that he was involved with Enron. |

| | **Houston** |
|---|---|
| 48 | The only word I think of is Enron. |
| 49 | Enron. Enron and the fraud they commited. |
| 50 | Nothing comes to mind. |
| 51 | The words that come to mind are swindler and patsy. He is a guy that takes advantage of people. He is the fall guy. He is going to take the hit for everyone else. |
| 52 | Enron comes to mind of course. If you are trying to get me to say whether or not he is guilty, I cannot do that. I do not know anything about him. |
| 53 | I do not know Jeff Skilling. |
| 54 | Jeff Skilling is a man with a family. I feel sorry for the family. Jeff Skilling is guilty and needs to be punished. He deceived everyone. |
| 55 | I do not pay attention to any of that sort of stuff. I do not know him. |
| 56 | I am drawing a blank. |
| 57 | Nothing. |
| 58 | He is one of the executives also. He is definitely responsible. He is a dishonest criminal. He is responsible for a lot of the mishandling of funds at Enron. |

| | **Houston** |
|---|---|
| 59 | Jeff Skilling was the CEO during the scandal at Enron. He has to be held responsible. |
| 60 | I do not know. Pan. Cooking. The last name Skilling. A cooking pan. |
| 61 | I really do not watch television too much. I think he is guilty. |
| 62 | Liar. Misapropriation of funds. He lied about everything. |
| 63 | I do not know Jeff Skilling. |
| 64 | I think of white collar crime, a sad situation, and breaking down. He just had a breakdown, what he has done was a crime and I do not mean street crime, it was corporate crime. He belongs in a white collar federal prison. |
| 65 | Nothing really comes to mind. |
| 66 | No words come to mind when I hear the name Jeff Skilling. |
| 67 | Jeff Skilling probably feels guilty for his actions. Jeff Skilling is shady. He took people's pensions away. Jeff Skilling is shrewd. He was not always the nice guy in business dealings. |
| 68 | The name is not familiar to me. |

| | **Houston** |
|---|---|
| 69 | Crook. That he is a criminal theif. |
| 70 | I do not know the name. |
| 71 | Jeff Skilling is a slimey rat. He is a back stabber and whistle blower. He will be toast after the trial. |
| 72 | I do not think of any words at all. |
| 73 | None, no thoughts come to mind. |
| 74 | Sleeze bag. Sleeze. Greedy. Dishonest. The fact that he stole his employees retirement away from them. He was a wealthy man and he wanted more money. That is sleezy. Exactly what the definition of greedy is: Wanting more and more of something. Never getting enough. Lying. Cheating. Not honest with the share holders who worked for you. |
| 75 | Who is that? |
| 76 | I think he was a CFO who became CEO. Like I said I do not have enough information to really say if he is guilty or not. |
| 77 | Enron, crooked dealings. He was part of the whole Enron mess. I think he will be spending some time with the Federal Government. |

| | **Houston** |
|---|---|
| 78 | Cheat. Liar. Theif. He was not honest with his company. He cheated a lot of people out of their retirement. He needs to pay the price for what he did. |
| 79 | Enron. CFO or COF. I really do not know any other words. |
| 80 | The words are corruption and a little off the center mentally. He would do anything to line his own pockets. I just heard that he has some mental problems. |
| 81 | I do not know anything about it. |
| 82 | Enron. Thief. He knew what he was doing as he cheated people out of their money. |
| 83 | Jeff Skilling was the president under Ken Lay. He quit when the scandal broke. What is interesting to me is that the lawyers who approved all the deals will not be indicted. They will go scot-free. |
| 84 | None at all. |
| 85 | None, I have no idea. |
| 86 | I only have two words to explain all of the people involved in Enron and I will not expand further: Economic terrorists. |
| 87 | I really do not know. I think he is guilty. |

| | **Houston** |
|---|---|
| 88 | Scandal is the word that comes to my mind, meaning inappropriate business behavior. |
| 89 | I do not know. It does not ring a bell. |
| 90 | I think he is guilty too. I just think that all of them are guilty and need to be prosecuted. |
| 91 | Enron. I do not pay attention to that kind of thing. |
| 92 | He is not trustworthy. I do not want to go any deeper then that. |
| 93 | Bad. He cheats and steals money from other people. |
| 94 | Crook. I think what he did was dishonest. |
| 95 | I do not want to answer that question. |
| 96 | I know nothing about Jeff Skilling. |
| 97 | The only word I can think of is guilty. |
| 98 | He is a weasle and he is dishonest. The entire time I was watching him on T.V. he looked like he was lieing. He looked like he knew about everything that was going on. |
| 99 | I have never heard of him. |

| | **Houston** |
|---|---|
| 100 | Enron. I do not know details about the whole situation. The executives are responsible for the share holders. They got away with a lot of money that should be taken back. |
| 101 | Sleezy, fast talker, trying to bargain his way out of things. He got caught breaking the rules and he is trying to cut a deal to avoid serving his full punishment. |
| 102 | They are crooks,sleezy, and greedy. They stole from people and took their retirement plans.Anyone that would do that is sleezy. They just took from the company in greed and they took from people who have now lost their jobs and homes all because they are crooks. |
| 103 | I am not going to answer that. |
| 104 | Nothing comes to mind. |
| 105 | Turkey. He is a turkey. |
| 106 | Enron. I really do not have much of an opinion about him. |
| 107 | I think he is guilty based on what I have seen on television. |
| 108 | That he is an executive at Enron. |
| 109 | The word Enron comes to mind. I just think of the company itself. |

| | **Houston** [redacted] |
|---|---|
| 110 | I do not even know who that is. |
| 111 | Schiester. Crook. Well, he not only ruined his company, he lied. He falsified. He caused a lot of people a lot of heart ache. |
| 112 | Nothing comes to mind. |
| 113 | I do not know. |
| 114 | I do not know. I do not think of the guy very often. |
| 115 | When I hear the name Jeff Skilling I think of that he is the CFO of Enron. |
| 116 | When I hear the name, Jeff Skilling, I think of jail. He was the accountant who did some interesting accounting. I have friends who were employed by Enron. |
| 117 | That he is a deceiver. |
| 118 | I really do not know. |
| 119 | Nothing comes to mind. |
| 120 | I am not familiar with that name. |

| | **Houston** |
|---|---|
| 121 | Jeff Skilling should be in jail for 20 years. I think the executives deserve to lose whatever financial gain they received and it should be given to the employees that worked all those years to earn it. The executives were greedy. |
| 122 | He is one of the ones that are guilt. He is an executive for Enron. He made money at the expense of the share holders. Especially those who worked for Enron and had money in a 401K. He helped bring Enron down. |
| 123 | Snake, corruption, thief, and immoral. He is a cold hearted person, he does not care about others. He was stealing from people and he did not care about any of the consequences other people were going to have to deal with because of his actions. |
| 124 | He was the guy who killed his wife when she was pregnant. |
| 125 | That he is one of those guys. |
| 126 | I do not know Jeff Skilling. |
| 127 | Absouletly no words come to mind. |
| 128 | I do not know. |
| 129 | I do not know Jeff Skilling. |

| | Houston |
|---|---|
| 130 | I do not know Jeff Skilling. |
| 131 | Jeff Skilling is a bastard. |
| 132 | I have never heard that name before. |
| 133 | That is him. He is the other executive I was thinking about. He is a crook. That whole bunch of executives stole a lot of money from a lot of people. |
| 134 | Nothing comes to mind. |
| 135 | A bad person. I am not sure who that is. |
| 136 | Not much really. |
| 137 | Food. I thought of a skillet. |
| 138 | Jeff Skilling is a greedy, corrupt crook. He has no character. My wife was an Enron employee. |
| 139 | Nobody |
| 140 | I do not know. I did not pay attention to the Enron scandal. |
| 141 | He is the one that masterminded the whole thing. He is probably going to go to jail. |

| | Houston [redacted] |
|---|---|
| 142 | I do not know. |
| 143 | Guilty and stock fraud. He manipulated the profits to drive up the stock for his own gain. |
| 144 | I taught the children of Enron executives. I refuse to say anything about them. |
| 145 | All I know is he worked for Enron. |
| 146 | I do not know enough about him to say any words come to mind. |
| 147 | Nothing, I do not know that name. |
| 148 | Enron. He worked for Enron. |
| 149 | He is the CFO. He was dishonest like the rest. That is all there is to it. |
| 150 | I think Jeff Skilling is guilty. |
| 151 | Jeff Skilling is a crook who is guilty. |
| 152 | Enron, embezelment- I know, well I do not really know, but I know he was stealing money from the company. |
| 153 | I do not know that name. |

| | **Houston** [redacted] |
|---|---|
| 154 | I know he worked at Enron. |
| 155 | I know he is with Enron, and that he is under investigation. |
| 156 | I do not know. |
| 157 | He is a dissapointment. The way he tood advantage, and the influence he put on the market place. |
| 158 | I do not know anything about it. |
| 159 | There are none that come to mind. |
| 160 | The word crook comes to my mind. What I mean by that is that I have a lot of friends that lost everything because of what happened at Enron. |
| 161 | There is nothing that comes to mind. |
| 162 | I have no idea who your talking about. |
| 163 | Jeff Skilling is guilty. My company went bankrupt because of its connection with Enron. |
| 164 | Who is he? |
| 165 | Enron Crook. I think Enron was a good company but the executives were trying to get their pockets full. |

| | **Houston** [redacted] |
|---|---|
| 166 | i do not know jeff skilling |
| 167 | I know he went to court. I do not know if he was convicted. There was also somebody with the name of Lay. I do not pay that much attention. |
| 168 | Yes, I have heard of him. Theif. He stole from the people. The people paying their bills. |
| 169 | Enron. That is it, just Enron. |
| 170 | Nothing |
| 171 | I do have some questions, but as far as words I really do not know. |
| 172 | He was doing something he had to do. Hard work. Just the word Skilling sounds like working hard. |
| 173 | I would say that I do not know. He was accused. |
| 174 | Nothing that concerns the Enron business. |
| 175 | Fraud. It is just like he had sticky fingers in the company before he left. |
| 176 | jeff skilling was involved in criminal activity. |
| 177 | There is nothing that comes to mind. |

| | **Houston** |
|---|---|
| 178 | When I think of Jeff Skilling, I remember Enron and that he is guilty. |
| 179 | jeff skilling is greedy, all the executives of enron were overpaid. jeff skililng is dishonest. he overvalued the company to make it look more appealing. |
| 180 | I never heard of him. |
| 181 | I do not know. I do not follow that lately. |
| 182 | I know he was associated with Enron other than that I do not know. |
| 183 | Mastermind. I think he had a lot to do with it. |
| 184 | Nothing at all comes to mind. |
| 185 | He was the former executive of Enron. |
| 186 | I refuse to say anything about Jeff Skilling. |
| 187 | I do not know him personally so I can not say. |
| 188 | My mind is blank when I hear the name Jeff Skilling. |
| 189 | There is nothing that comes to mind. |

| | **Houston** |
|---|---|
| 190 | I have heard the name but nothing comes to mind. |
| 191 | I do not know anything about him. |
| 192 | I do not know Jeff Skilling. |
| 193 | Crook. Self-indulgent. No conscience. I believe he had his own interests at heart and not the interest of his shareholders or employees. I have a friend who is single and she lost half her retirement at the age of 64, because of Enron. A lot of people lost so much and he had a lot to do with it. |
| 194 | Guilty. He has done a lot. |
| 195 | I do not know Jeff Skilling. |
| 196 | The word Enron comes to mind and an association with Ken Lay. That is all I can tell you. |
| 197 | i do not know jeff skilling. |
| 198 | I do not even know who Jeff Skilling is. |
| 199 | I am not familiar with who he is. |
| 200 | Refused to answer. Respondant would not give an opinion until they are prooven guilty. |

| | Houston [redacted] |
|---|---|
| 201 | It is not that important to me right now, I am more concerned with the presidential campaign. |
| 202 | Jeff Skilling was the President for many years and C.E.O. for a while. |
| 203 | Jeff Skilliing is a shyster and a crook. |
| 204 | Thievery, stealing, fraud, and taking things that do not belong to you. |
| 205 | There is nothing in particular that comes to mind. |
| 206 | none |
| 207 | Absolute corruption. Greed. Caught. Guilty. I also think of a long jail term. I think of stolen retirement funds. |
| 208 | Nothing comes to mind when I hear the name Jeff Skilling. |
| 209 | Jeff Skilling is in trouble with Enron. He is one of the main defendants. |
| 210 | I do not know anything about him. |
| 211 | I do not know Jeff Skilling. |
| 212 | There is nothing that comes to mind. |

| | **Houston** [redacted] |
|---|---|
| 213 | Everybody who is involved is a crook. They are all crooks. |
| 214 | Nothing comes to mind when I hear the name Jeff Skilling. |
| 215 | Guilty. He took money from the people. He is a snake and they all should go to prison. |
| 216 | I do not know. I did not follow that. |
| 217 | No Opinion. |
| 218 | Jeff Skilling is greedy. He cheated his own company to make money. Jeff Skilling is power hungrey. The more money he had the more power he received. |
| 219 | That does not ring a bell. |
| 220 | I do not know. He might have something to do with Enron. |
| 221 | Loudmouth. He talks too much about the case with a "poor me" attitude. |
| 222 | I do not know Jeff Skilling |
| 223 | I do not know of anything. |
| 224 | Looney tunes is what I think of hearing Jeff Skillings name. I mean that I think he is unintelligent, very underhanded, and just not very smart. |

| | **Houston** [redacted] |
|---|---|
| 225 | Nothing. |
| 226 | I do not know Jeff Skilling. |
| 227 | Enron. That is were he was employed. |
| 228 | I am not familiar with that name. There is nothing that comes to mind. |
| 229 | Crook. Immoral. Bad buisnessman. Stealing money that was not his from people. I am sure that was not how his parents reasied him. He has a lack of moral values. If you are a good buisnessman you do not ahve to seal the money other people made. |
| 230 | I do not even know him. |

| | **Houston** [redacted] |
|---|---|
| 231 | Liar. Cheat. Thief. He did not tell the truth. He said that he was not in communication with the people of Enron. He said that he was not involved with the Enron shanagian. Well, obviously he cheated the investers and employees. He broke the money from the net fund. The employees retirement fund is worthless and he profited from it. Obviously he stole. He profited from misinforming. He profited from making certain deals and then selling the stoclk when it went down. He knew it was going to go down. He did not allow the employees to do the same. He prevented the employees from selling their Enron 401K by changing the director in the 401k which prevented the employees from selling for three months. |
| 232 | The word Enron comes to mind, and the things he did. |
| 233 | I do not know him. |
| 234 | Jeff Skilling is a scoundrel. He should be held accountable for his crimes. |
| 235 | He is one of them, meaning that he is guilty of the charges. |
| 236 | Stealing, enron, A rich man stealing from Enron. |

| | **Houston** |
|---|---|
| 237 | He was one of the Enron bunch, meaning he was one of the executives responsible for the downfall and the illegal way they ran the company. |
| 238 | I do not know who he is. |
| 239 | I am not allowed to speak about that. |
| 240 | Jeff Skilling may have been the comptroller. |
| 241 | I will take a guess and say that he was from Enron, but I do not recognize the name. |
| 242 | That he is quilty of ripping people off. I feel like they all knew what was going on and went overboard with it. |
| 243 | The words in trouble come to mind. |
| 244 | He was management for Enron. |
| 245 | Enron |
| 246 | I do not know him. |
| 247 | The word thief comes to mind, meaning someone who steals money with no conscience for his own benefit. |
| 248 | I am familiar with the name Jeff Skilling, but I do not know anything about him. |

| | **Houston** [redacted] |
|---|---|
| 249 | Enron. He has already pleaded or something and he is guilty. |
| 250 | He is just a person to me. |
| 251 | Nothing comes to my mind. I will let a jury decide who is guilty and who is not guilty. |
| 252 | I think he perhaps mismanaged the company of Enron. |
| 253 | I think that he is being accused of some serious allegations. I also think that if he is guilty he should be prosecuted. |
| 254 | I can not repeat what words come to my mind. |
| 255 | Dishonest. I just do not believe he tells the truth, I do not trust him. He appears to me to lack a conscience. |
| 256 | I do not know Jeff Skilling. |
| 257 | I know the name from what I have heard in the media and read in the newspapers. I guess the word deceptive comes to mind but that is only an opinion that comes from what I have read and heard. |
| 258 | I do not know Jeff Skilling. |
| 259 | That is another guy from Enron management. |

| | **Houston** |
|---|---|
| 260 | Jeff Skilling is part of Enron. |
| 261 | I know who he is. No words come to mind. |
| 262 | I really do not know. |
| 263 | I do not recognize that name. |
| 264 | I would rather not comment on something I know nothing about. I have not followed the stories on Enron. |
| 265 | I do not remember that name. |
| 266 | I think of enron, I quess I am not really sure. |
| 267 | Jeff Skilling is the head CEO of Enron. |
| 268 | When I hear the name Jeff Skilling nothing comes to mind. |
| 269 | I mean, I know he has been to trial and all this stuff. I have not really kept up on it, but I know that they have caused a lot of people grief and they should have known what was happening. They should give all the money back to the people and the retirement funds. If they are found guilty, they should face the consequences. |
| 270 | I do not have any opinions. He got money at the expense of other employees. |

| | **Houston** |
|---|---|
| 271 | I do not know who he is. |
| 272 | I have no idea. I do not know who that is. |
| 273 | I do not want to comment on that. ibelieve it is up to the law to decide. |
| 274 | When I hear the name Jeff Skilling the word I think of is untrustworthy because he lookied to be hiding something from the begining. |
| 275 | Nothing comes to mind at the name Jeff Skilling. |
| 276 | None, Nothing comes to my mind when I hear that name. |
| 277 | He is one of the guys who is going to trial. |
| 278 | It does not ring a bell. I am sorry. I did not follow the case that closely. I watched the news a little bit, but I could not give you specificis on a specific person. I just kind of know roughly what happened. |
| 279 | The name does not ring a bell. |
| 280 | The word that comes to mind is blank |
| 281 | I do not know Jeff Skilling. |

| | **Houston** |
|---|---|
| 282 | No, I have never heard of him. |
| 283 | Scumbag is the word that comes to mind at the name Jeff Skilling. |
| 284 | I think criminal comes to mind. He decieved the people that worked there. I cannot think of anything that is worse than that. |
| 285 | I think it is Enron. I read something about Jeff Skilling. I think he was a financial advisor or something. |
| 286 | Arrogant. He just thought he could get away with it. He knew activities, he knew what was going on and he thought he could get away with it. |
| 287 | I have no idea |
| 288 | He is a thief. I think of debt, robbing people of their money, and mismanaging people's money. |
| 289 | "Criminal", he is one of the bad ones. He caused all the trouble that duked all the people out of their retirements and everything, was not that him? I do not remember the details, but he did something bad. |
| 290 | Enron. I have heard his name, and just know he is associated with them. |
| 291 | i do not know the name. |

| | **Houston** [redacted] |
|---|---|
| 292 | I have no idea. |
| 293 | I do not know who that is to tell you the truth, I did not pay attention to the Enrpon thing. |
| 294 | He is one of them. He was the chief financial officer. |
| 295 | Enron is guilty and greedy. He caused a lot of people who worked hard to lose their jobs. |
| 296 | There is nothing that comes to mind. |
| 297 | When I hear the name Jeff Skilling I know he is associated with Enron. |
| 298 | Just Enron. He was one of the people who was doing wrong. I was not there so I do not know. |
| 299 | I do not know the name Jeff Skilling. |
| 300 | I do not know I have never heard of his name. |
| 301 | I am not sure. I do not know who he is. |
| 302 | There is nothing that comes to mind. |
| 303 | i do not know anything about it. |

| | **Houston** [illegible] |
|---|---|
| 304 | The word “notoriety” comes to mind. |
| 305 | I think he is guilty of fraud of some sort. He ended up with a lot of money that was not his, and he took it from other people. |
| 306 | Dishonest’ is the word that comes to mind when I think of Jeff Skilling. |
| 307 | I do not know him. |
| 308 | He was one of the big ones in charge. He had non-legal programs that he ran. He should be in jail and it is taking too long. |
| 309 | I have heard the name alot,but noy what it was in reference to. |
| 310 | In Jail’ are the words that comes to mind when I think of Jeff Skilling. |
| 311 | he was one of the accountants. i just know the name was related with the enron case. |
| 312 | I have not heard that name |
| 313 | i do not know. |
| 314 | Ihave no idea. |
| 315 | I do not know. |

| | **Houston** [illegible] |
|---|---|
| 316 | I have not been keeping track of Enron. |
| 317 | I do not know him |
| 318 | The word yuck comes to mind. |
| 319 | i think he was, not a CEO, but in the financial department of, let me see, he was in contracts or something like that. |
| 320 | He is a criminal. |
| 321 | He is with Enron and so is Ken Lay. |
| 322 | I think he is probably a criminal. |
| 323 | I did not keep up with it because I was living in another state. |
| 324 | I have my own opinion on that and I do not hwant to share it. |
| 325 | the word crook come to mind. i believe he was deceitful in taking things he should not. fixing the books in their favor. incorrectly reporting data. |
| 326 | The only word that comes to mind is mean. |
| 327 | I cannot think of anything. |

| | **Houston** |
|---|---|
| 328 | I have heard the name in associatio nwith enron. I do not know much about him.I believe he is a schemer. |
| 329 | I do not know who that is. |
| 330 | I guess he is crooked and doing wrong. |
| 331 | I think of pompus. I think he is a pompus ass. I worked for the man so I can say this. I cannot think of anything food to say right now. |
| 332 | He is probably not as guilty as the others. |
| 333 | I never heard of him. |
| 334 | I think his behavior was questionable |
| 335 | I think of Enro |
| 336 | nothing, i do not know who jeff skilling is. |
| 337 | I think he was a manipulator, the manipulator who affected the entire company profits for his own gain, for money. |
| 338 | i do not know. |
| 339 | I do not recognize that name. |

| | **Houston** |
|---|---|
| 340 | I do not know. |
| 341 | He is a public figure. |
| 342 | sneeky and arrogant are the words that come to mind. |
| 343 | I think he is a crook. |
| 344 | He's guilty. Fed's are going to pull him away. |
| 345 | He was probably quilty too. I am really not paying much attention anymore. |
| 346 | He was involved with it. |
| 347 | I cannot think of anything. |
| 348 | I do not know who that is. |
| 349 | He is a thief. |
| 350 | The only thing that comes to mind when I hear the name Jeff Skilling is that he was an executive of Enron and is being accused f a crime. |
| 351 | Jeff Skilling is a rich man and a bad man. That is all I know about him. |

| | **Houston** |
|---|---|
| 352 | He is the devil. He is a sorry sun of a gun who is only out for himself. |
| 353 | The first workd that copmes to mind when I hear the name Jeff Skilling is manager of Enron. He is one of the managers that have been taken to trial in the Enron case. |
| 354 | The words that come to mind when I hear the name Jeff Skilling are crooked and arrogant. I feel crooked describes him because he seens like a dishonest person and because he commited criminal acts that were involved in the collapse of Enron. I feel he is arrogant because he seems to have the attitude that he is above reproach. I also feel arrogant describes him because he seems to act like he is all knowing, or at least that he knows more than anyone else. |
| 355 | what words come to mind when you hear the name Jeff Skilling?I have not followed the case very much. |
| 356 | When I hear the name Jeff Skilling I can only associate the name with Enron Corporation. |
| 357 | Energy trader are the only words that come to mind at the name Jeff Skilling. |
| 358 | The word that comes to mind when I hear the name Jeff Skilling is fraud. Fraud being basic white collar crime. Also cheating and mismanagement of funds come to mind. |

| | **Houston** |
|---|---|
| 359 | The words that come to mind when I hear the name Jeff Skilling is CEO of Enton. He is one of the people who were accused of mismanaging the company |
| 360 | I think Jeff Skilling is a crook, and he mismanaged the funds, and misrepresented the company. |
| 361 | He is crooked. |
| 362 | When I think of Jeff Schilling nothing comes to mind. |
| 363 | The words that come to mind when I hear the name Jeff Skilling are guilty and greedy crook. Guilty comes to mind because I feel that he did what he did and that deprived elderly people of their pensions. I am an elderly person and I know how awful it would be to loose the pension you depend on. Hurting that many elderly people so severely is, I feel, the equivalent of being an axe murderer. His actions were just as harmful as an axe murder to the elderly. If I were on a jury, I would send him to jail because he is so guilty. I also think he is a greedy crook. I think this because he acted in a dishonest maner. He was dishonest because he wanted money so he simply took it without any reguard for others or the law. |
| 364 | He was involved in the Enron scandal. |

| | **Houston** |
|---|---|
| 365 | When I hear of the name Jeff Skilling, I think of Enron. I also think someone has done bad things and I beleive he is one of them. |
| 366 | Nothing. I assume he is one of the Enron people. |
| 367 | hen I hear the anme jeff Skilling, Nothing comes to my mind for I have never heard of Jeff Skilling. |
| 368 | Jeff SKilling is an arrogent, coniving, pompas, brilliant crook. That should cover it I think. |
| 369 | He is a man who has taken atvantage of his position so he could gain financially from the share holders and employees. |
| 370 | I have never heard of Jeff Skilling. |
| 371 | When I hear the name of jeff Skilling, It makes me think that he is the nut involved with the scam. |
| 372 | Enron is the only thing that comes to mind at the name Jeff Skilling. |
| 373 | He is another one, I guess. |
| 374 | I do not know. |
| 375 | I heard of that name in the papers. I do not trust what the media says. They are liberals in what they report. I do not know the man so I can not say anything about him. |

| | **Houston** |
|---|---|
| 376 | He is a crook for his illeagal activities to make money |
| 377 | Sneaky,guilty and dishonest are all things that come to my mind, and that is about it. |
| 378 | He might possibly be guilty. Enron comes to mind. Accounting. Until they have gone to trial and been convicted I will not decide. |
| 379 | i think former Ceo of Enron |
| 380 | None come to mind. |
| 381 | I think he is a crook because of the way he does stuff. |
| 382 | The words that come to mind when I hear the name Jeff Skilling is co-conspiritor, and greed. Jeff Schilling was just a greedy as the rest of the people involed in the scandal |
| 383 | Jeff Schilling is a crook, had management problems and is a person I would not like to work for. |
| 384 | He is a buisness man. y |
| 385 | minipulative. He causes people to act around him. He minipulates people. |
| 386 | It does not ring a bell |

| | **Houston** |
|---|---|
| 387 | i have not followed that trial |
| 388 | Nothing comes to mind when I hear the name Jeff Skilling. |
| 389 | The name Jeff Killing reminds me of the |
| 390 | He is a crook because he stole money from the company. He cheated money out of people that was not his. He was sneaky and tried to hide what he did. |
| 391 | Certainly I think of Enron. I think of a theif, as in someone who steals money. |
| 392 | He was in the office of enron as ceo so he should have known what was going on. |
| 393 | Nothing comes to mind at the name Jeff Skilling. |
| 394 | Enron is the only word that comes to mind at the name Jeff Skilling. |
| 395 | I do not think anything at all when I hear that name. |
| 396 | I do not know the name Jeff Skiling.. y . |
| 397 | He was not in error. He is a business man who wants to make money like anyone elese. He is not the problem. They want to blame some one. I do not see anything he should be in prison for. It is this cowboy goernment. President Bush should be impeached. |

| | **Houston** |
|---|---|
| 398 | I do not believe that all the facts are out about the situation. |
| 399 | He is the CEO so he knew what happened. I can not believe he did what he did to the company. |
| 400 | He was one of the top five of Enron. He is a defendant in one of the criminal cases against him. He is also a defendant in some civil cases. |
| 401 | I know he is one, I think he is guility. |
| 402 | When I hear the name Jeff SKilling, I think that maybe he is in trouble. I do not know. Innocent until proven guilty, I guess. |
| 403 | I do not know. |
| 404 | Thief, Liar con man, I spose that is about all that comes to my mind. |
| 405 | Nothing comes to mind. |
| 406 | He schemed people, I believe that he planned to defraud his company. He is arrogant, he thought he could get away with it. |
| 407 | I have never heard of him. |
| 408 | He was one of the top executives of enron. |

| | **Houston** |
|---|---|
| 409 | No words can accuratly describe Jeff Skilling. |
| 410 | Nothing comes to mind at the name Jeff Skilling. |
| 411 | He is another one of those former Enron executives. I think he plead guilty. I guess Skilling is going to trial. I am not sure. I am all confused now. |
| 412 | Is that the guy from enron. |
| 413 | Nothing comes to mind at the name Jeff Skilling. I do not know what comes to mind at the name Jeff Skilling. |
| 414 | The words that come to mind are greed, capitalism and criminal. |
| 415 | Nothing, never heard of him. |
| 416 | Enron comes to mind. |
| 417 | I never heard of Jeff Skilling. |
| 418 | Enron comes to mind at the name Jeff Skilling, and how he, Ken Lay, and the wife ruined a good company. Ken Lay and Jeff Skilling were in cahoots together, but I am not sure how much Ken Lay was involved. |
| 419 | Nothing in particular comes to mind, just that he did some fraudulent activities in a business setting. |

| | Houston [redacted] [redacted] [redacted] [redacted] [redacted] |
|---|---|
| 420 | Jeff Skilling, I could not tell you. I guess he is one of the guys involved in Enron. |
| 421 | Enron comes to mind. He is alleged to have done a lot of misdeads. |
| 422 | That does not mean anything. |
| 423 | I do not know. |
| 424 | I can not remember if he was the one to blow the whistle or not. |
| 425 | Nothing comes to mind. |
| 426 | He is another one involved. He was one of the executives and had something to do with it in some way. |
| 427 | I feel he is at fault for a lot of people losing a lot of money and assisting in the downfall of Enron. |
| 428 | I do not know him. |
| 429 | Nothing at all comes to mind. |
| 430 | he is one of those people |
| 431 | I do no9t know who Jeff Skilling is |

| | **Houston** |
|---|---|
| 432 | The word that comes to mind when I hear the name Jeff Skilling is thief. He is one of the people that mismanaged the company. the bad taste also come to mind. He took what the working people work hard for. He just took from the working people with no regard for their future. |
| 433 | Was he one of the head Guyes? I do not know the guy. |
| 434 | There is nothing that comes to mind when I hear the name Jeff Skilling. |
| 435 | Nothing comes to mind when I hear the name Jeff Skilling because I do not keep up with current events. |
| 436 | He is associated with Kenneth Lay. |
| 437 | He is an enron employeee. |
| 438 | Jeff Skilling was the former president of Enron. He is under inditement. |
| 439 | Nothing come to mind because I dont know anyone. |
| 440 | i have no idea who jeff skilling is |
| 441 | The only thing that comes to mind when I hear the name Jeff Skilling is that he was the CEO of Enron. |

| | **Houston** [redacted] |
|---|---|
| 442 | the words that come to mind when I hear the name Jeff Sckilling are unscruplous, despicable and deciseving. He and others were princaple in the demise of Enron |
| 443 | accountant pops in to my mind when i hear the name jeff skilling |
| 444 | I have no opinion on the Enron topic. |
| 445 | He was a part of the Enron scnadal. I do not want to have to be a part of it, and so I do not pay much attention to it. That is how businesses are run these days. |
| 446 | When I hear the name Jeff Skilling I think of the company Enron as a whole. |
| 447 | If Jeff Skilling is one of the Enron guys, the word that comes to mind is theif. He took a lot of money from our city that we could have used. |
| 448 | I can remember the name Jeff Skilling mentioned on indepent radio,but I do not Rember the subject. |
| 449 | I do not konw who Jeff Skilling is. |
| 450 | Nothing comes to mind when I hear the name Jeff Skilling because I do not know who that is. |
| 451 | When I hear the name Jeff Skilling I think that he is one of the guys under Ken Lay. He is under endictment, to be tried or convicted. |

| | **Houston** |
|---|---|
| 452 | I do not know who Jeff Skilling is. |
| 453 | The words that come to mind when I hear the named Jeff Skilling is he is one of them. He was one of the key memberof Enron when they got the whistle blown on them . He is not in jail |
| 454 | When I hear the name Jeff Skilling, I think of him as an Enron executive and a white collar criminal. I believe he was an account manager, but I am not certain. When I say he is a white collar criminal, I mean he was someone who heads up a company and uses unlawful tactics to gain money and use their position at their company to greedily take money that is not theirs. |
| 455 | he was with the enron scandal. |
| 456 | I would rather not say what comes to mind when I think of jeff skilling |
| 457 | I think he is a crook. |
| 458 | Nothing comes to mind. |
| 459 | I do not know who he is. |
| 460 | When I hear the name Jeff Skilling the words that come to my mind are Lier and thief. |

| | **Houston** |
|---|---|
| 461 | I have no idea who that is. |
| 462 | It is not oggd. He has been accused of doing bad things, that is about all I can say. |
| 463 | I do not have an opinion. |
| 464 | I think of Enron. I am not a fan of what happend. |
| 465 | I do not know that much. I do not think that he was guilty, but he resigned. |
| 466 | Nothing comes to mind when I hear the name Jeff Skilling. |
| 467 | To be honest, nothing really comes to mind regarding Jeff Skilling. Chin Lee would hit it. |
| 468 | I think Jeff Skilling is a criminal and a crook. |
| 469 | I do not know. |
| 470 | Ido not know who he is really, I have heard he has been accused of crimes, but I do not know if he is guilty or not. |
| 471 | I have no idea. |
| 472 | In my opinion, guilty as sin. |

| | Houston |
|---|---|
| 473 | I know that Jeff Skilling is involved with Enron. |
| 474 | I do not know the name. I do not know who Jeff Skilling is. |
| 475 | The whole Enron situation comes to mind. He has been accused of a crime. I never heard of him before he was on TV being accused of crimes here in Harris county. |
| 476 | Just Enron comes to mind. I just heard it on the news. |
| 477 | I know that Jeff Skilling is one of the high officials of Enron Company who contributed to their downfall but I do not know exactly what he did to contribute. I am not a lawyer and I am not in a jury box and without a lawyer to explain it to me, I cannot say. |
| 478 | There is nothing that comes to mind. |
| 479 | None. |
| 480 | I dont know who that is |
| 481 | I do not know Jeff Skilling. |
| 482 | I do not want to commment on enron. |
| 483 | Nothing comes to mind, I have never heard that name before. |

| | Houston |
|---|---|
| 484 | He is guilty. He was a mastermind. He was crooked |
| 485 | Enron comes to mind when I hear the name Jeff Skilling. |
| 486 | That he was the C.E.O. of Enron. |
| 487 | There is nothing that comes to mind. |
| 488 | Nothing comes to mind, I do not want to say any one is guilty or not based on what I have heard in the news. |
| 489 | I think he did things to enrich himself at the expense of the company. He was also unethical. |
| 490 | I think he is associated with Enron. |
| 491 | Enron, and he was involved with the mess. |
| 492 | none |

| | **Houston** |
|---|---|
| 493 | Enron mess. I want my 10,000 dollars back. Enron would help the women and childrens charities in my community. The main people were not honest and could not keep those charities open. Enron promised these charities money but neve gave it to them. They were not very good stewards of the company. I owned 10,000 dollars in Enron stock and it was for retirement. In about a week it was reduced to pennies on the dollar after the incident. |
| 494 | I am not familiar with Jeff Skilling. |
| 495 | I have never heard of him. |
| 496 | None because I do not pay enough attention to even know who that is. |
| 497 | I do not even know who that is. |
| 498 | He squandered the books. |
| 499 | Nothing comes to mind when I hear Jeff Skilling.3 |
| 500 | Does he think about what he did with people? Does he know he messed with too many peoples money? Does he think he should give the money back and put himself in the hole that he put others in. ta. |

| | **Houston** |
|---|---|
| 501 | I know he has been indicted |
| 502 | I do not know him. |
| 503 | I do not know. |
| 504 | He was an Enron executive but I do not know if he was guilty. |
| 505 | Nothing is coming to mind. |
| 506 | Nothing comes to mind |
| 507 | I do not know who that is. |
| 508 | He is a part of all the Enron conspiracy. |
| 509 | He is the CEO of Enron. |
| 510 | I thin of "creative financing." As I understand it, they ripped off Enron and the public, but they worked at it with their financing. They pulled it off wth various diversifications. |
| 511 | I have not heard that name. |
| 512 | Nothing comes to mind. |

| | Houston |
|---|---|
| 513 | Nothing comes to mind, I have not been following this at all. |
| 514 | I have no idea. |
| 515 | I have no idea. |
| 516 | He has been convicted. He stole a lot of money. |
| 517 | If anyone is guilty he is probably it, because he was in the position to know what was going on at the time this started. He was there during the mismanagement of funds and probably directing them to the wrong areas and people. |
| 518 | I do not know Jeff Skilling. |
| 519 | Enron. He is being prosecuted as well. He is the scapegoat. He is the person Ken Ley is blaming to take the blame away from himself. |
| 520 | I do not know him or those people. |
| 521 | I think he is guilty, but I forgot to name him in previous question. He hass not gone to court yet. |
| 522 | I know he was under Tom Lay. |

| | **Houston** [redacted] |
|---|---|
| 523 | I think that he knew that what he was doing was wrong when he did it. I think that he knew the consequences that would come to him if he got caught. He tried to cover his tracks to avoid detection and all this he did knowing that people would be badly hurt when he was doing this. |
| 524 | I do not know who that is. |
| 525 | i think he was just a conniver, i think he is guilty but i guess the court will decide that. |
| 526 | I think he is the one who killed himself.ta. |
| 527 | he fooled around with the money. He worked out all those schemes to show they had less money then they did. |
| 528 | A year ago, Jeff Skilling was unknown. Now, he is in serious trouble facing prison time. |
| 529 | He was in Enron. |
| 530 | I think he is guilty. He is a criminal. It is terrible what he did to the employees. |
| 531 | I do not know him. |
| 532 | I know he is one of them, the guilty ones. The whole case would not have collapsed if he was not guilty. |

| | **Houston** |
|---|---|
| 533 | He is associated with Enron but in what capacity I could not tell you. |
| 534 | Scapegoat. The people at Enron did what they did but he went down for it first. |
| 535 | Nothing comes to mind at the name Jeff Skilling. |
| 536 | Enron is the only thing I think of. |
| 537 | Enron. He was an executive, or something like that. |
| 538 | I know he was an Enron executive. |
| 539 | I cant remember |
| 540 | I do not know about him. |
| 541 | Dishonest. No integrity. ta. |
| 542 | Just that his name is reported on television. They are sending him to court and he was found guilty. We have someone who commited suicide and he probably held the key to what went on. |
| 543 | I know nothing about him. |
| 544 | He was one of the executives of Enron. |

| | **Houston** |
|---|---|
| 545 | I know he was an Enron executive who was accused of mismanagement, but that is all I know. |
| 546 | An accountant that accounted to well. |
| 547 | I am not from the area, they are from st. louis area enron is and i am not familiar with the company itself. some will give in to protect their job and it is sad. i do admire sharon who went to bed and tettletaled. This has caused everyone in the electrical and everyone is suffering. this top people did not tell everything they knew int he beginning. if it would have been done right in the beginning things would have been settled. I feel sorry for them but at the same time i have no sympathy. they will live to regret greatly the things they have done and they have hurt people. i think it is sad when people get greedy, this is what happens when one gets greedy. if you work hard you will get things in return, when you try to cheat it gets back to you. there is all kinds of peole in the world. greedy ones make it hard for themse |
| 548 | I do not know who it is. |
| 549 | Do not know. |

|  | **Houston** |
|---|---|
| 550 | He has the T.V. appearance of a slickster. He acts a little cooler than he should, maby it is his eyes or the way he combs his hair. |
| 551 | Stealing money or other stuff is what comes to mind when I hear the name Jeff Skilling. |
| 552 | It does not mean a thing to me. |
| 553 | He has not been found guilty yet so he is innocent untill proven guilty, but if the people at the top do not know what is going on at the bottom then they have some big problems. They do not need to be at the top. They should not be making millions. |
| 554 | I do not know about him. |
| 555 | I do not knoe who that it. |
| 556 | Nothing comes to mind because i do not really know him. |
| 557 | I have no comment on that. |
| 558 | I know that he was rich. He had a lot of money. I do not know much else about him. |
| 559 | I do not want to discuss Jeff Skilling. |

| | **Houston** |
|---|---|
| 560 | Enron. That he is guilty. He cheated the company. |
| 561 | Nothing comes to mind at all. |
| 562 | I do not know. |
| 563 | Jeff Skilliing was the CEO at Enron. He resigned early in the scandal. I know nothing else. |
| 564 | Oh, Skilling, the word liar comes to mind, meaning he does not tell the truth. |
| 565 | He did not tell the truth and he knew darn well what he was doing. |
| 566 | When I hear the name Jeff Skilling, I think about Enron and that one of those Enron guys committed suicide. With the name Enron, I think of the company in general and the scandal behind it. It has become more than a company name. It has become synonymous with 'scandal' and 'fraud'. |
| 567 | I do not know him. I have never heard of him. |
| 568 | I believe he was one of them at Enron. He knew what was going on and a party to it. |
| 569 | He is with Enron. |

| | **Houston** |
|---|---|
| 570 | He was the former president of that corporation or the c.e.o. you know the top man. i think he was the last one or the one before. ta. |
| 571 | He is a crook. He rips people off. He cheats the workers. He is undercutting. |
| 572 | When I think of Jeff Skilling I think of a very bright and arrogant man. He was an MBA from Harvard and he knew it. His actions and arrogance created an atmosphere at Enron that brought down the company. Mainly it was his anything goes attitude where he would let anything happen as long as it increased the stock price that led to the collapse of Enron. |
| 573 | He has stolen money where people have lost all of their retirement funds. He embezelled money, he stole it so he is a criminal. He is no different than the people who rob convenience stores, only they are high tech. |
| 574 | Extortion is what I think of. I mean financial fraud. |
| 575 | Contributor to the fall of Enron and the taking of money from people. |
| 576 | Enron comes to mind. I can not describe him. |
| 577 | I know that he was an Enron top executive. I know that he was indicted in the case. I have no opinions of his guilt or innocence in the matter. |

| | **Houston** [redacted] |
|---|---|
| 578 | No words come to mind. |
| 579 | I have seen him on t.v. |
| 580 | Probably rich greedy person i guess i do not know. ta. |
| 581 | I do not know if they have sent him to the pennitentary or if they are just trying him. If they are guilty or not I have no idea. |
| 582 | I know alot of people that have worked at enron and they say that all kinds of paper companies were set up to divert funds to him. |
| 583 | I do not know. I have seen his name in the news as part of it. |
| 584 | I do not really know who Jeff Skilling is. |
| 585 | When I hear the name Jeff Skilling it comes to mind that he is involved with enron and guilty of fraud and conspiracy. |
| 586 | Not a thing comes to mind. I do not know their names. |
| 587 | I do know that he was an Enron executive. The media says that he took money from Enron. That is all I know. |
| 588 | he has been accused of a crime with enron. he has been endicted and is coming up for trial with enron. i do not know if ge is guilty or not. ta. |

| | **Houston** |
|---|---|
| 589 | Schemer,Thief. He deliberately found a way to take the money for himself which means he stole. |
| 590 | I have head the name in the nnews,but can not think of what about,so I have no opinion. |
| 591 | He was part of that Enron deal. He was embezzling money, and caused a lot of people to lose jobs. |
| 592 | I do not know. |
| 593 | Who is he? |
| 594 | The word crook comes to mind at the name Jeff Skilling. He took peoples retirement and investment money and did what they wanted with it, such as buying houses. Leaving people broke and in financial ruin. |
| 595 | I have no idea. |
| 596 | He was the main person who lied to people about the company making money when it was losing hundreds of thousands of dollars. |
| 597 | he just got a little greedy. that sums it up pretty well. |
| 598 | He is one of those top employees. I did not follow enough of the story to know anything about him. |
| 599 | I do not know the name Jeff Skilling |

| | **Houston** |
|---|---|
| 600 | Nothing comes to mind. |
| 601 | I think of crook (white collar crimes, a theif and embezzler). |
| 602 | He is on the evening news a lot. |
| 603 | Nothing comes to mind. |
| 604 | I do not know that person. |
| 605 | I think he was an Enron person. |
| 606 | The words "crook". He used...he lied. He knew documents were being falsified and filed with the FCC. |
| 607 | I have no opinion on that. |
| 608 | I have seen it in the news but I have never heard that name before. |
| 609 | "Guilty", I believe that he is not more guitly than others like Ken Lay. That is all I can say. |
| 610 | I associate him with enron. |
| 611 | He is dishonest and evil. I think he was a CEO on the Enron Leadership Commitee where they tried to make it look like their company was making money, when they actually were just moving it around. |

| | **Houston** |
|---|---|
| 612 | IT sounds like a devious name. It sounds like a dirty name. He does not sound like a clean guy. |
| 613 | It reminds me of enron.I think he was one of them |
| 614 | I would think Jack Skilling is one of the crooks along with Lastow and Fay. |
| 615 | I think of a corrupt politician who is a thief. He lied about everything. |
| 616 | He was the CEO of Enron. He cheated investors. |
| 617 | No words come to mind. |
| 618 | I know that they were all involved, but I cannot pin point the blame. |
| 619 | Pig. Snake. A snake is slithery and sneaky. A pig is dirty. Anybody that would do what he did is dirty. In my opinion, they have taken too long to come to trial. |
| 620 | I do not know him. |
| 621 | He is the CEO of Enron. |
| 622 | Nothing. |
| 623 | I do not know Jeff Skilling. |

| | **Houston** |
|---|---|
| 624 | No comment. |
| 625 | There is nothing that comes to mind. |
| 626 | I did not pay attention to Jeff Skilling who worked for Enron. I have no opinion. |
| 627 | He is one of them. He is one of the major excutives in the company.I read in the paper that he was involved in stocks or something like that at Enron. |
| 628 | There are none that come to mind. |
| 629 | I remember him now. I think of Enron, fraud, mis-management, slimebag. Creating fictitious companies and altering financial documents constitutes fraud and mis-management, in my opinion. |
| 630 | I do not know who that is. |
| 631 | I do not know Jeff Skilling |
| 632 | I do not know. I am 95 years old my mind is not what it use to be. |
| 633 | I know that he is one of them, meaning that he is one of the workers. |
| 634 | That name does not ring a bell. |

| | **Houston** |
|---|---|
| 635 | dishonest, unethical, immoral- He was aware of what was going on and he implimented it. What they did was illegal. They stole peoples pensions. I mean how could you knowingly do something like this? |
| 636 | Jeff Skilling was employed by Enron. That is all that I will say. |
| 637 | An executive at Enron. Rich. It has been indicated that he has a great amount of money. People are innocent until proven guilty. |
| 638 | Jeff Skilling is a criminal. He did something wrong and is being charged for stealing from people. Jeff Skilling is a cheat. What he did was not legal and was immoral. |
| 639 | Is that one of them? I guess the word guilty comes to mind. |
| 640 | The word illegal comes to mind, meaning dealings that were not quite within the law. |
| 641 | When I hear the name Jeff Skilling I think of the word power. Somebody that is authority in a high-level position. |
| 642 | Jeff Skilling was accused of doing something illegal at Enron. I do not know what the crime was. |
| 643 | Nothing. |

| | **Houston** |
|---|---|
| 644 | Enron is the only thing that comes to mind. |
| 645 | It makes me think of the Enron scandal. He is one of the guys that is getting in trouble. I do not know anything specific about him. |
| 646 | Same as all the rotten bunch. |
| 647 | When I hear the name Jeff Skilling I think he is a crook. He was a head honcho in the mimanaging of Enron. |
| 648 | Enron comes to mind when I hear his name. |
| 649 | I do not know who Jeff Skilling is. |
| 650 | I do not know about him. |
| 651 | Nothing at all comes to mind. |
| 652 | He was in charge of accounting or something. |
| 653 | Jeff Skilling was an executive at Enron. I have nothing else to say. |
| 654 | It sounds familiar, but no words come to mind. |
| 655 | The words sneaky, cheater, and liar come to mind. It is like when I saw him on television it felt like something was going on that was not right. |

| | Houston |
|---|---|
| 656 | I do not know him. |
| 657 | Jeff Skilling was part of Enron. |
| 658 | i do not know enough about Jeff Skilling to comment. |
| 659 | I cannot tell. |
| 660 | Jeff Skilling is a liar. |
| 661 | I really do not know, and do not care. |
| 662 | I do not know Jeff Skilling. |
| 663 | I know that he was an executive with enron. I think that he was convicted of something or other. |
| 664 | Crook. Dishonest. He is a dishonest individual who used the corporate umbrella to take care of himself. He was making illegal transactions. |
| 665 | Nothing comes to mind for that name. |
| 666 | I know that Jeff Skilling was an Enron executive accused of a crime. I know nothing else. |

| | **Houston** [redacted] |
|---|---|
| 667 | I do not know all the facts. I think he was involved in the mischief. I know he set up offshore accounts to hide illegal business practices. He embezzled moneyt from stock holders and employees. I think he is guilty as sin. |
| 668 | Jeff Skilling is a swindler. He took millions of dollars away from people. |
| 669 | That he is a thief and he screwed his employees. |
| 670 | Nothing comes to mind when I hear the name Jeff Skilling. |
| 671 | He was involved with Enron. I think of the fact that a lot of people lost a lot of money. A lot of employees had faith in the company and they invested in it for their retirement and they lost money. Maybe now other companies who might be doing similar things are realizing that they could get caught. |
| 672 | Jeff Skilling was employed by Enron and he is a crook. |
| 673 | Jeff Skilling is guilty. He robbed the people he worked for. |
| 674 | He is one of those crooks. He stole from the people, he lied and cheated. He was greedy. |
| 675 | He was one of the executives. I do not know any facts. |

| | **Houston** |
|---|---|
| 676 | Jeff Skilling was skimming money from Enron. His gains were made at the expense of other Enron employees. |
| 677 | I refuse to say anything about Jeff Skilling. |
| 678 | Nothing |
| 679 | Nothing comes to mind when I hear the name Jeff Skilling because I have never heard of him. |
| 680 | The word Enron comes to mind. I have seen about Enron on the television. |
| 681 | An accountant and one of the top executives who "cooked the books." He put in misleading and false entries. |
| 682 | He was an accountant. I do not know anything else. |
| 683 | I do not know. |
| 684 | There is something shadey about him, but I do not remember what. |
| 685 | Jeff Skilling is corrupt. He broke the rules for personal gain. |
| 686 | The word crook comes to mind, he has cheated people. |

| | **Houston** |
|---|---|
| 687 | Jeff Skilling is over ambitious by not caring what damage or what it costs to be the king. He is greedy because he only cares about himself and the money he will make. He does not care about the little man. He is pompous because it is all about himself. He is rude because he curses and disrespects people. |
| 688 | Enron is what comes to mind, other than that I would rather not comment. |
| 689 | He is a criminal as well as the other Enron people. |
| 690 | I do not know him. |
| 691 | I do not know Jeff Skilling. |
| 692 | Jeff Skilling had something to do with what happened at Enron. |
| 693 | I think he is a coniving person. He was an executive at Enron. |
| 694 | Jeff Skilling is a crook. |
| 695 | I also associate him as part of Enron. |
| 696 | He is another one of the Enron executives who is going to stand trial. |
| 697 | The word set up comes to mind, meaning I think he is the fall guy. |

| | **Houston** [redacted] |
|---|---|
| 698 | I have no idea who that is. |
| 699 | When I hear his name, Enron comes to mind. |
| 700 | There are so many names that I did not recall that I did not recall all of them, but I think that his name was associated with fraud, dealing with different monies. |
| 701 | I will not answer that. |
| 702 | I think he is one of those people at Enron. |
| 703 | I will not comment, because you would not want to hear everything I have to say. |
| 704 | I do not know Jeff Skilling. |
| 705 | I do not know anything about Jeff Skilling, I have nothing to do with that. |
| 706 | Nothing at all. |
| 707 | He was involved in the Enron scandal, but I do not know what he did or did not do. |
| 708 | I have no idea who that is. |
| 709 | The word unethical comes to mind. He was self serving being more concerned with his own finacial well being rather than the companys. |

| | **Houston** |
|---|---|
| 710 | I do not know I am blank. |
| 711 | I know he is involved. I believe was the guy who turnrd states evidence to get a lighter sentence, I think he admitted a bunch of stuff and was found guilty. |
| 712 | That he is the former Enron C.E.O. He is accused of criminal acts in respects to the company. |
| 713 | I do not know Jeff Skilling. |
| 714 | Jeff Skilling worked for Enron. |
| 715 | I do not know anything about Jeff Skilling. |
| 716 | I do not want to answer your question of what words come to mind when I hear the name Jeff Skilling. |
| 717 | The word crook comes to mind meaning that I think Jeff Skilling is a criminal. |
| 718 | Enron, that is all. |
| 719 | Jeff Skilling is greedy and inconsiderate. He is guilty of prior knowledge of the collapse and misappropriating pension funds. |

| | **Houston** |
|---|---|
| 720 | The words bad person comes to my mind when I hear the name Jeff Skilling. Those people with Enron stole a lot of money from us teachers and bought themselves nice homes and cars and took it from our investments. Now we have nothing in the accounts we invested in for our retirement. I think that they should all be hanged. |
| 721 | The only thing I am going to say is Enron. |
| 722 | I do not know. |
| 723 | Corrupt. It seemed he had a lot to do with the misleading management. |
| 724 | NOthing because I never heard of him. |
| 725 | I do not know who that is. |
| 726 | I have heard of him on television. |
| 727 | Clever- He hurt people and a lot of people lost everything they had. He was deavious. |
| 728 | Jeff Skilling is a crook. |
| 729 | I do not know Jeff Skilling. |
| 730 | I do not know that name. |

| | **Houston** |
|---|---|
| 731 | Guilty is what comes to my mind. I mean that I think he is guilty of fraud, I believe that he jipped those people out of their retirement. |
| 732 | Enron. |
| 733 | There is nothing that comes to my mind. |
| 734 | I think he was the one who helped the prosecution but I am not sure. |
| 735 | I think that he is also bad and that he was rediculous in New York. I mean that he was caught being bad in New York. |
| 736 | I do not know Jeff Skilling. |
| 737 | I do not know that name. |
| 738 | There is nothing that comes to mind. |
| 739 | I have never heard of Jeff Skilling. |
| 740 | Fraud is the word that comes to mind meaning cheating, cooking the books, doctoring the bottom line. That is all that comes to my mind. |
| 741 | Evil. He is an evil person. |
| 742 | I know that he is or was with Enron. |

| | **Houston** |
|---|---|
| 743 | The word sharpie comes to mind meaaning a person who cuts corners. |
| 744 | He is one of the head guys at Enron. |
| 745 | A man who has been accused of wrong doings at Enron. |
| 746 | To my knowledge he has not yet been found guilty of anything. There are two words that come to my mind though they are wealthy and smart. |
| 747 | I do not recognize the name. |
| 748 | That name does not ring a bell to me. |
| 749 | The words greedy, corrupt, and guilty come to my mind. Meaning that I think that they knowingly mislead their shareholders while making a profit for themselves. |
| 750 | Jeff Skilling is a crook. |
| 751 | Computers. I am not really into this kind of stuff but I think that he has something to do with computers. |
| 752 | He is not to be trusted. Arrogant. He thinks he is above the law and is too sure of himself. |
| 753 | I think he is the one that committed suicide. |

| | **Houston** |
|---|---|
| 754 | Jeff Skilling is another one with Enron that I believe is guilty of crimes. |
| 755 | The words guilty, and manipulation comes to my mind. I mean that I think he is guilty of manipulating the shareholders for personal gain. |
| 756 | Liar. Lecherous. Fraud. Thief. He stole from employees. He stole their pension plans. He is not an honest man. He is a crook and a criminal. |
| 757 | I do not know that name. |
| 758 | Nothing comes to mind. I do not know anything specifically about him. There is a lot of bad business going on and there are a lot of bad crooks out there. The only thing different about the Enron situation is that something slipped out. |
| 759 | He is a sad story. He is cornered, and he has a deer caught in the headlights look on his face. He is guilty, he knows it, and he got caught. He can no longer hide it. The evidence that was dug up from public records by the media is more than enough to convict him. He can not have a position like chief executive officer and not know what is going on with the company. |
| 760 | I do not know anything about Jeff Skilling except that he is one of the executives too. |

| | **Houston** |
|---|---|
| 761 | Oh, Jeff Skilling is with Enron and one of the bad people. I listened to him two years ago when he was questioned and he did not impress me as telling the truth. |
| 762 | Stock manipulation is the first that comes to mind. He manipulated the stocks to make false profits. He would keep the books open past the end of the fiscal quarter to increase profits in the quarter. The california energy crisis also comes to mind. It was basically a fabrication - he would play games with the supply on the gas lines. |
| 763 | The name Jeff Skilling I think Enron executive who is a thief and stole from his invested. |
| 764 | He misappropriated the funds, and stepped down from the top job. |
| 765 | prosicute him to the fullest, they know what was going on and should get as much time in the penetentary as possible. |
| 766 | The name Jeff Skilling does not ring a bell. |
| 767 | I do not know anything about Jeff Skilling. |
| 768 | He is one of the guys in charge. I think of the word 'crook'. I think he knew what was going on and i think he is guilty. |

| | **Houston** |
|---|---|
| 769 | He was the former president of Enron. He is going to be indicted. He and Ken Lay will be tried in the same trial. He resigned his presidency rather abruptly, and it was not explained why. |
| 770 | Nothing comes to mind when I hear the name Jeff Skilling |
| 771 | I have heard people talk about him, and they say he is a crook. I do not know why. |
| 772 | I do not know. |
| 773 | Enron. All that comes to mind is that he was with Enron. |

| | Atlanta [illegible] |
|---|---|
| **#** | **Response** |
| 1 | Nothing comes to mind |
| 2 | I do not know. Nothing comes to mind. |
| 3 | Skilling was one of the prime officers of the financial office of Enron. He was one of the accused. |
| 4 | Enron ,I guess.I do not know. |
| 5 | I do not know anything about it. |
| 6 | I have never heard of the man. |
| 7 | He was wrong in the way he ran the company because he was firing and laying people off for no reason I heard on the news a couple of weeks ago. |
| 8 | No, I do not know the name. |
| 9 | I am totally blank on that name. |
| 10 | I do not know the name Jeff Skilling. |
| 11 | I have never heard the name |
| 12 | That's the other name I couldn't think of. He's the corporate guru of Enron |

| [redacted] | Atlanta [redacted] |
|---|---|
| 13 | Nothing comes to mind |
| 14 | I think,he was one of the Enron executives. |
| 15 | Nothing comes to mind. |
| 16 | Not a thing comes to mind at the name Jeff Skilling. |
| 17 | I have never heard of him |
| 18 | I do not know the name |
| 19 | Nothing comes to mind |
| 20 | None words come to mind. |
| 21 | I have no idea. |
| 22 | I do not recognize the name. |
| 23 | He is a potential munipulator of funds.Allegedly in the newspaper he misused the funds,but I do not know that is the allegation |
| 24 | Enron comes to mind. |
| 25 | Currupt is the word I would say. He did what he did which cost people money and |

| | Atlanta |
|---|---|
| | jobs and only for his self-interest. |
| 26 | Nothing comes to mind when you say the name Jeff Skilling. |
| 27 | Nothing comes to mind |
| 28 | Jeff Skilling sounds vaguely familiar to me. |
| 29 | Sir, I do not know any of those people. |
| 30 | I do not know Jeff Skilling. |
| 31 | Nothing comes to mind. I am not much of a follower of that kind of stuff, aside from the presidential candidates. |
| 32 | I have never heard of him, and nothing comes to mind when you mention his name. |
| 33 | Nothing comes to mind at the name Jeff Skilling. |
| 34 | I do not know |
| 35 | Nothing at all comes to mind. |
| 36 | He was the CFO. I feel nothing but contempt for Enron executives. |
| 37 | He was the CEO I believe, of Enron. |

| | **Atlanta** |
|---|---|
| 38 | White collar crimes. Those are just the words that came to mind |
| 39 | He is Enron right? I do not know, I did not follow that. |
| 40 | Health South comes to mind.I think that he might have ran the company |
| 41 | nothing |
| 42 | Nothing comes to mind at the name Jeff Skilling. |
| 43 | I know nothing about him, I have never heard of him. |
| 44 | i think of Enron, i mean the company and the scandel over mismanagement of funds for accounting purposes. |
| 45 | Obviously, nothing comes to mind. |
| 46 | Nothing comes to mind. |
| 47 | The word that comes to mind when I hear the name Jeff Skilling is thief because he stole peoples money and is walking around free now. |
| 48 | Nothing comes to mind. |
| 49 | I am not familar with that name. |

| | Atlanta |
|---|---|
| 50 | Nothing, I have never heard of that man in my intire life. |
| 51 | I do not know him. |
| 52 | I cannot associate that. |
| 53 | I do not know who Jeff Skilling is. |
| 54 | He is part of the scandal that caused Enron to fall. |
| 55 | Nothing comes to mind when I hear that name. |
| 56 | nothing comes to mind. |
| 57 | Nothing come to mind when I hear the name because I have not heard the name before. |
| 58 | I do not know that is. |
| 59 | I do not know who Jeff Skilling is. That name is not familiar. |
| 60 | I do not recognize that name. |
| 61 | He pillaged all that everyone has worked for. |
| 62 | Nothing comes to mind. I do not know that name. |

| [illegible] | Atlanta [illegible] |
|---|---|
| 63 | None come to mind. |
| 64 | Nothing comes to mind at the name Jeff Skilling. |
| 65 | Nothing comes to mind when I hear that name. |
| 66 | He is the president of Enron. That is all I know about him. |
| 67 | The name does not ring a bell. |
| 68 | There is nothing that comes to mind. |
| 69 | esp |
| 70 | I have not heard enough of the news to remember the names,though I am familiar with the issue |
| 71 | I am trying to figure out who he is...nothing I guess. |
| 72 | i think he was the CEO at Enron. He was one of the major CEO's at Enron that left before they got in trouble. |
| 73 | When I hear the name nothing comes to mind because I am not familiar with him. |
| 74 | I think Jeff Skilling was particularly dishonest and that happens a lot in big corporations. |
| 75 | Nothing comes to mind. |

| [redacted] | Atlanta [redacted] |
|---|---|
| 76 | All I know about him is he was part of it. That is all I can tell you. |
| 77 | The words come to mind are liar, arrogant, greedy, thief, stupid. |
| 78 | Nothing, I have never heard of him. |
| 79 | I think enron |
| 80 | When I hear the name Jeff Skilling I think of rich, overpaid, selfish, and self indulgent because he took the publichs trust and misused it. |
| 81 | No words come to mind. |
| 82 | I do not know who that is. Nothing comes to mind. |
| 83 | Cheating by misrepresenting comes to mind. Cooking the books so to speak. |
| 84 | I can think of nothing. |
| 85 | He is a deceitful lying leader. I do not think he told the truth. |
| 86 | I do not know |
| 87 | I do not know |
| 88 | Nothing, I do not know who that is. |

| [illegible] | Atlanta |
|---|---|
| 89 | Like I said, I draw a blank about this. |
| 90 | When I hear the name Jeff Skilling nothing comes to mind because I do not know the name. |
| 91 | I do not know the name. |
| 92 | I do not know the name |
| 93 | Nothing comes to mind. |
| 94 | Nothing comes to mind when I hear his name, |
| 95 | Hi is guilty too.He wa s |
| 96 | Nothing never heard the name |
| 97 | Nothing, I do not know who that is |
| 98 | I do not have any opinion on this subject. |
| 99 | Ido not know him. |
| 100 | Somebody who tends to operate in a way which is profitable to his business and dentramental to the public. There are a lot of people who have last their pensions because of Skilling. |

| [redacted] | Atlanta [redacted] |
|---|---|
| 101 | I think coniving,sneaky,doing things behind your back |
| 102 | I do not remember who he is. |
| 103 | I have never heard of him |
| 104 | He is one of the fellows involved with Martha Stewart. He was onw of her Brookers, I think. |
| 105 | Never heard it. |
| 106 | he is involved in one of those scams or somthing. |
| 107 | Curruption and greed are the two words that come to mind. |
| 108 | Nothing, I do not know. |
| 109 | Nothing comes to mind. |
| 110 | I do not know the name. |
| 111 | I have heard that name before, but I do not know him. |
| 112 | When I hear the name Jeff Skilling nothing comes to mind, I have not heard it before. |
| 113 | I could not tell you anything about that. All i have heard is how the money is getting messed up. |

| | **Atlanta** |
|---|---|
| 114 | No words come to mind at the name Jeff Skilling. |
| 115 | He is one of them. I think of Enron and off-shore companies. He was the one who decided to use off-shore companies. |
| 116 | Well his is crooked. They did not do it right. Well, it is just a sorrry, sore mess. It took a great company down and made it bankrupt. |
| 117 | I do not know one way or the other. |
| 118 | No words come to mind |
| 119 | Maybe that Enron guy. |
| 120 | I am not sure. |
| 121 | I draw a blank. |
| 122 | I do not know who he is. |
| 123 | Nothing comes to mind. |
| 124 | None come to mind. |
| 125 | Nothing comes to mind at the name Jeff Skilling. |

| | Atlanta |
|---|---|
| 126 | I really do not know. |
| 127 | I do not know anything. |
| 128 | I think he was from Enron. That is about it. I have not really followed it that closely. |
| 129 | I think of fraud and Enron. |
| 130 | I have no idea who that man is. |
| 131 | Nothing comes to mind. |
| 132 | When I hear the name Jeff Skilling the word unconcerned comes to mind. |
| 133 | no words come to mind |
| 134 | I do not know the name. |
| 135 | None come to mind. |
| 136 | I have never heard of Jeff Skilling. |
| 137 | None come to mind. |
| 138 | I do not know. I have not heard the name. I have no idea who he is. |

| | **Atlanta** |
|---|---|
| 139 | No thoughts comes to mind when I hear that name. |
| 140 | Corruption, greed. I remember reading that he was involved in the corporate scandals, weather he was indited or has already pled, I do not know. |
| 141 | Unethical, guilty. I think what happened in the Enron situation is horrible and taking the money from the people's retirement. I think that they should spend time in jail and give back money to the people as far as it will go. |
| 142 | Nothing at all. |
| 143 | he is the one I was thinking of. I think he and Lay were guilty. What comes to mind is how many people were left with nothing. Their future just vanished because of their crimes |
| 144 | I do not remember. I just know Skilling is with Enron. |
| 145 | Nothing comes to mind. |
| 146 | I have no clue. |
| 147 | Nothing comes to mind with that name. |
| 148 | That does not bring anything to mind. |

| ID | **Atlanta** |
|---|---|
| 149 | Nothing comes to mind. |
| 150 | Nothing comes to mind. |
| 151 | Is he part of Enron? I do not know who he is, I probably should know, but I do not. |
| 152 | can not say that I have heard of him. |
| 153 | I do not have a clue. |
| 154 | Nothing comes to mind. |
| 155 | I do not know Jeff Skilling. |
| 156 | I do now know who that is. |
| 157 | He is handsome. |
| 158 | I do not know the name, so nothing. |
| 159 | Corparate greed comes to mind. |
| 160 | When I hear the name Jeff Skilling nothing comes to mind. |
| 161 | Nothing, I do not know the man. |

| [redacted] | **Atlanta** [redacted] |
|---|---|
| 162 | Nothing. |
| 163 | I do not know the name. |
| 164 | I do not know. |
| 165 | When I hear the name Jeff Skilling I think of him as a member of Enron. |
| 166 | He is one of them. He is one of the executives that got caught. That is it. |
| 167 | I do not know. Nothing. |
| 168 | That is a famliar name, but I am not sure why. |
| 169 | Enron, he was one of the former officers of Enron. |
| 170 | Nothing, I have never heard of him. |
| 171 | I have never heard the name Jeff Skinner. He is probably the top guy there. I had a brother inlaw who worked for Arthur Anderson. |
| 172 | I have no idea |
| 173 | I do not know who he is. |
| 174 | Nothing comes to mind when I hear that name. |

| | Atlanta |
|---|---|
| 175 | Oh, I know he is one of them. I do not know if he is CEO. |
| 176 | I have no idea. |
| 177 | Jeff Skilling was the president of Enron at one time and got out of the company just before it declared bankruptcy. |
| 178 | Can not answer that one. |
| 179 | Nothing comes to mind. |
| 180 | Nothing comes to mind. |
| 181 | I cannot recall him. |
| 182 | I think crook when I hear his name |
| 183 | There is nothing at all that comes to mind. |
| 184 | I do not know. It does not ring a bell. |
| 185 | I know he was involved,but I do not know how. |
| 186 | nothing |
| 187 | Actually nothing comes to mind because I have not kept up with it. |

| | **Atlanta** |
|---|---|
| 188 | There is nothing I know at all. |
| 189 | Nothing comes to mind. |
| 190 | i have not heard that name. |
| 191 | None come to mind. |
| 192 | nothing, i do not know who he is. |
| 193 | I do not know who Jeff Skiling |
| 194 | I do not know him |
| 195 | I do not know the man. |
| 196 | Nothing comes to mind. |
| 197 | there is nothing that comes to mind. |
| 198 | I have never heard of him. |
| 199 | There is nothing that comes to mind at all. |
| 200 | nothign comes to mind. i just know there is something going on. |

| [redacted] | Atlanta [redacted] |
|---|---|
| 201 | I have not been following this. |
| 202 | I do not keep up with a lot of things like that. |
| 203 | He is one of the people involved in financial inpropriety. nothing comes to mind but financial inpropriety. |
| 204 | I do not know the name |
| 205 | I do not know |
| 206 | I do not know that name. |
| 207 | nothing comes to mind. i do not know who that is. |
| 208 | Nothing, I have never heard of him. |
| 209 | I have no idea. |
| 210 | I do not know that name. |
| 211 | I beleive he had something to do with Enron, but I am not sure what his position was. |
| 212 | I have no idea who that name is. |
| 213 | I do not recognize that name. |

| | Atlanta |
|---|---|
| 214 | Nothing comes to mind. |
| 215 | I do not know him |
| 216 | I have no idea. |
| 217 | I know thathe was accused of wrongdoing but I do not know any of the details. |
| 218 | I do not know who he is. |
| 219 | he is involved in Enron, but I don't pay too much attention to that stuff |
| 220 | I do not know. |
| 221 | I know about Enron. The people lost their money. I do not know about Jeff Skilling. |
| 222 | there is nothing. |
| 223 | I do not know who that is. |
| 224 | I have never heard of him. |
| 225 | He is a crook. They steal from employees, investors and the stock holders for their own personal gain. |
| 226 | nothing comes to mind. i do not know who that is. |

| | Atlanta |
|---|---|
| 227 | i do not have anything. |
| 228 | I have never heard of him or that name. I just do not know. |
| 229 | He is another ceo of enron, I know he is the guy under all the things going on |
| 230 | He was in it too now that I think about it. |
| 231 | I would have thought he had something to do with finance. It has become very vague to me, what happened. |
| 232 | Who is jeff Skilling, man? |
| 233 | he was one of the corrupt people. He has not been put in jail yet. He was the guy in charge before the president took over and it collapsed. |
| 234 | i do not know, i could not tell you. i believe they are all guilty. |
| 235 | I am not familiar with the name |
| 236 | No words come to mind at the name Jeff Skilling. |
| 237 | I do not know who he is, so I could not answer that question in any way. |
| 238 | Nothing comes to mind. |

| | **Atlanta** |
|---|---|
| 239 | i thinkg of big money and of robbing people. He had some thirty million that he defrauded the employees who invested in the company. I think of fraud and greed and selfishness. |
| 240 | I do not know. |
| 241 | Nothing much comes to mind |
| 242 | I think he was the former president of Enron. |
| 243 | I think that he was one of the top executives that had something to do with the money. Nothing comes to mind I have just seen it on the news. |
| 244 | That sounds like a lawyer's name. He was in a ar accident or something like that. I am not sure. |
| 245 | Nothing comes to ming. |
| 246 | "Crook", he used unethical management of corporate funds. He did not adhere to GAAP (Generally Accepted Accounting Principles) that accountants should adhere to. |
| 247 | None comes to mind. |
| 248 | I do not know |

| | **Atlanta** |
|---|---|
| 249 | I think he is a crook and liar. I think he is a cheat. |
| 250 | I do not know who that is. |
| 251 | I do not know. |
| 252 | i do not know that name. |
| 253 | Nothing comes to mind. |
| 254 | I do not know |
| 255 | I do not know him. I just do not know. |
| 256 | People are losing faith in the company becuase of the scandals. They also cheat a lot of people. |
| 257 | I think of a crook, it sounds like one of the Enron guys. |
| 258 | There is nothing that comes to mind. |
| 259 | i think of corrupt. somebody who is on the take all the time. i view all corporations today as being in cahoots with the government. making policies and tax cuts then raising prices. they rule the market and make these monopolies, you cannot have monopolies without the governments help. |

| [redacted] | Atlanta [redacted] |
|---|---|
| 260 | I do not know the name |
| 261 | I do not have a clue. |
| 262 | Nothing comes to mind at the name Jeff Skilling. |
| 263 | I think I just do not know. I really do not know. I do not know the solution to the enron problem. |
| 264 | I think of Enron.  He was one of the officers. |
| 265 | The name does not ring a bell. |
| 266 | Enron comes to mind. I think he was the financial person. I have not really kept up with that recently. |
| 267 | I do not know.  A white guy in a tuxedo. |
| 268 | I do not know who that is. |
| 269 | I do not know him |
| 270 | I do not know. |
| 271 | It does not ring a bell. |
| 272 | I have no idea who he is. |

| | **Atlanta** |
|---|---|
| 273 | Nothing comes to mind. I just do not know. |
| 274 | I do not know anything about him. |
| 275 | He worked for enron and was involved in all sorts of schemes |
| 276 | I do not know |
| 277 | I do not know. |
| 278 | Nothing comes to mind. |
| 279 | Nothing comes to mind at the name Jeff Skilling. |
| 280 | I do know who he is. |
| 281 | I do not know. |
| 282 | nothing at this time. |
| 283 | Nothing comes to mind |
| 284 | i do not know who he is. there is nothing that comes to mind. |
| 285 | Nothing comes to mind. |

| | Atlanta |
|---|---|
| 286 | I have never heard of him. |
| 287 | I can think of nothing. |
| 288 | I have never heard of him. |
| 289 | Nothing comes to mind. |
| 290 | Nothing comes to mind. |
| 291 | i have no idea, i have never heard of him. There is nothing that comes to mind. |
| 292 | I can not think of anything |
| 293 | I have never heard of him. |
| 294 | Nothing comes to mind. |
| 295 | I do not recognize the name |
| 296 | i think of liar and cheat. i believe he came after ken lay and he is more bhind enrons devious behavior. |
| 297 | Nothing comes to mind. |
| 298 | I do not really know. Nothing at all comes to mind at all. |

| [redacted] | Atlanta [redacted] |
|---|---|
| 299 | I have never heard of him. |
| 300 | I do not know who that is. |
| 301 | i do not know. |
| 302 | Problems in doing the paperwork ethically correct is what comes to mind. |
| 303 | I do not know |
| 304 | He worked for enron. Nothing else comes to mind. |
| 305 | He is one of the CEO's. That is what comes to mind. And there was some kind of case against him. |
| 306 | I know who he is from television. |
| 307 | nothing comes to mind. |
| 308 | I do not know that name. Was he the high up guy at Enron? |
| 309 | I think he is probably related to Enron because of the last question you asked me. |
| 310 | I do not know who that is. |
| 311 | It soundsa like he may be an executive of enron. |

| | Atlanta |
|---|---|
| 312 | Nothing comes to mind at the name Jeff Skilling. |
| 313 | none. i do not know that name. |
| 314 | I do not know. |
| 315 | Nothing comes to mind. |
| 316 | Nothing comes to mind. |
| 317 | I do not know the name. I do not know anything at all. |
| 318 | There is nothing that I can tell you. |
| 319 | He was the ceo. He was involved in that somehow, I think. |
| 320 | I do not know who he is. |
| 321 | Nothing comes to mind. |
| 322 | Crazy comes to mind. |
| 323 | Nothing. I have never heard of him. |
| 324 | I am not familiar with the guys who are accused in the Enron case. |

| [redacted] | **Atlanta** [redacted] |
|---|---|
| 325 | Tax fraud comes to mind. I do now know. I know the name but I do not know who that is. |
| 326 | i have never heard that name. |
| 327 | I do not know who that is. |
| 328 | I think he is corrupt and a thief. |
| 329 | I can not tell you that. I just do not know. |
| 330 | I do not know |
| 331 | He was the financial officer, I believe, he was the CFO (Chief Financial Officer). He was in top management, he was on the board, he was one of the members of the board. He was the decision maker. I think he is the culprit, a scheemer. He manipulated the oil, electricity, and gas prices especially to the detriment of California. They bragged about how they duked the people. He was the one that Bush referred to as one of the "Kenny Boys". |
| 332 | He was one of the Enron people. |
| 333 | I have no answer. |

| | **Atlanta** |
|---|---|
| 334 | Nothing really comes to mind. |
| 335 | I believe he was chair of the board. There was a treasurer who was helpful. I do not recall her name. That is all I know. |
| 336 | I do not know who that is. |
| 337 | I do not know Jeff Skilling. |
| 338 | I have no idea because I have never heard of him. |
| 339 | I do not want to comment on that. |
| 340 | I do not know |
| 341 | nothing. i have no idea who that is. |
| 342 | Nothing comes to mind, nothing at all. |
| 343 | When you say the name Jeff Skilling nothing comes to mind. |
| 344 | he is the chief financial officer or chief executive officer. the first thing that came to my mind was executive of Enron. |
| 345 | I do not know who he is. |
| 346 | I think he was a manipulator. He was acting good in front of the people. |

| | **Atlanta** |
|---|---|
| 347 | Nothing comes to mind at the name Jeff Skilling. |
| 348 | Nothing comes to mind. |
| 349 | Nothing comes to mind. |
| 350 | When you say the name Jeff Skilling nothing comes to mind. |
| 351 | No words come to mind. |
| 352 | Do not know who that is. |
| 353 | i think that he was a crook too. |
| 354 | I do not know who he is. |
| 355 | Nothing comes to mind. |
| 356 | Nothing comes to mind. |
| 357 | When I hear the name Jeff Skilling I do not really think of anythink. I do not know the guy and do not have an opinion. |
| 358 | I do not know. |
| 359 | I do not know, I do not recognize the name. |

| | **Atlanta** |
|---|---|
| 360 | Enron comes to mind. There were some criminal matters that he was involved in with that corporation. |
| 361 | I do not know who that is. |
| 362 | I do not know. I do not know. |
| 363 | I have never heard of him. |
| 364 | Nothing comes to mind, I do not know. |
| 365 | He is one of the defendent. I can not remember the name but I think he was an Enron defendent. |
| 366 | You are talking to someone who is not at all knowledgeable. I really do not know a nd you are probably wasting your time talking to me. |
| 367 | I would not know. |
| 368 | When I hear the name Jeff Skilling no words come to mind. |
| 369 | Nothing comes to mind when I hear the name Jeff Skilling. |
| 370 | Nothing comes to mind. I am not familiar with the  case. |
| 371 | I do not know, I have seen him in the newspaper. |

| | Atlanta |
|---|---|
| 372 | Nothing at this time. |
| 373 | I do not know. |
| 374 | I do not know. |
| 375 | i have no clue. |
| 376 | i have never heard of him. |
| 377 | I have not kept up with it . Nothing comes to mind at all. I can not help you. |
| 378 | I have never heard of him. |
| 379 | I do not know him |
| 380 | That is one of the Enron guys. |
| 381 | When I hear the name Jeff Skilling no words come to mind. |
| 382 | i do not know. |
| 383 | He is one of them, too. He is guilty. |
| 384 | No words come to mind at the name Jeff Skilling. |

| | Atlanta |
|---|---|
| 385 | Nothing at all comes to mind. |
| 386 | No idea who that is. |
| 387 | nothing comes to mind. |
| 388 | I do not know. If they have been on television, I have not been watching. |
| 389 | I do not know. |
| 390 | I have never heard the name. |
| 391 | I think of fraud. The guy was playing with numbers in order to inflate stock prices. |
| 392 | Enron is the only thing that comes to mind at the name Jeff Skilling. |
| 393 | Thaht does not ring a bell, I am sorry. |
| 394 | Nothing comes to mind |
| 395 | I have never heard of him. |
| 396 | Nothing at all comes to mind. |
| 397 | absolutely nothing comes to mind. |

| | Atlanta |
|---|---|
| 398 | I do not know. |
| 399 | I think that he is guilty. He is in it with Ken Lay. He knew about it and he helped him. |
| 400 | The words very dishonest and deceiving come to mind. He fooled all his employees to get rich. He stole all of that money. He cannot stand to make millions and millions while they lost their retirement. He was selling his stock and, at the same time, telling his employees to invest. |
| 401 | He was their chief financial officer. |
| 402 | I do not know who Jeff Skilling is. |
| 403 | Nothing comes to mind at the name Jeff Skilling because I did not follow the news. |
| 404 | When I hear the name Jeff Skilling not a word comes to mind. |
| 405 | nothing comes to mind, i am not familiar with that name. |
| 406 | I have no idea, |
| 407 | He is probably an enron executive. I do not know the name. |
| 408 | He was the CFO of enron. |

| | Atlanta |
|---|---|
| 409 | "Health South", I do not know, I thought he was a CEO (Chief Executive Officer) of a company called "Health South". |
| 410 | nothing at all i do not know any of their names, just that they messed up. |
| 411 | Noothing comes to mind. |
| 412 | I have no idea. |
| 413 | A criminal, he stole money and was well aware of what was going on in the company. They ruined the lives of thousands of people, "corporate thugs." He should have been locked away a long time ago. Ken Lay should be locked up also, but political clout is helping Bush's, they are his largest contributors. |
| 414 | I think of trouble.He was with enron |
| 415 | He is one of the guys from Enron who took the 401(k)s. He mismanaged the people's money. |
| 416 | That name does not ring a bell. |
| 417 | He was the president of Enron at one time. |
| 418 | He slipped under the radar with me. The name sounds familiar. I know he was wrapped up in all that. |

| | Atlanta |
|---|---|
| 419 | i do now know Jeff Skilling. |
| 420 | Nothing comes to mind. |
| 421 | Nothing comes to mind. |
| 422 | I do not know him |
| 423 | Well, that is Enron, i think. Well, it is the company that Arthur Anderson, the accountant was mixed-up with. |
| 424 | I have never heard of him. |
| 425 | Nothing comes to mind. |
| 426 | nothing in particular comes to mind |
| 427 | Nothing comes to mind at all. I do not know. |
| 428 | Nothing comes to mind. |
| 429 | Nothing at all comes to mind. |
| 430 | none. i do not know of jeff skilling. |
| 431 | I do not know who Jeff Skilling is. |

| | Atlanta |
|---|---|
| 432 | I do not know |
| 433 | I do not know. I have not been following that. |
| 434 | When I hear the name Jeff Skilling no words come to mind. |
| 435 | Worldcom, he was the CFO. He used his corporate power and rank abusively. I hope america comes to learn its' lesson. |
| 436 | I have no idea who that is. |
| 437 | there is nothing that comes to mind |
| 438 | I have not heard of Jeff Skilling at all. |
| 439 | "Bankrupcy" of California small businesses, thousands of them because of the energy costs that went up. They had to declare bankrupcy. |
| 440 | I do not know the name |
| 441 | I think he was another one, financial,I know he is corrupt. |
| 442 | I do not know him |
| 443 | Nothing comes to mind. No, nothing at all. |

| | Atlanta |
|---|---|
| 444 | I do not know what comes to mind. |
| 445 | I have never heard that name |
| 446 | I do not know who it is. |
| 447 | I do not know him. |
| 448 | I am not going to answer this question. |
| 449 | I am not familiar with the name |
| 450 | I think he is involved in a scandal of some sort. |
| 451 | harvard business school comes to mind. that is where he went to school. everyone thought he was so great then he did these crushingly horrible things. when the deal started to unravel he extended too much effort that they just didn't have. i guess i would say ruthless and risky also. somenody that is a risktaker beyond reasonable levels. you can take mathematical calculated risks and they pushed the envelope ignoring th enegatives of their actions. That was his personality to make deals happen. |
| 452 | None come tomind. |

| [redacted] | Atlanta [redacted] |
|---|---|
| 453 | I do not recognize that name. |
| 454 | I do not have any idea. I do not know the name. It does not effect me. |
| 455 | I do not know anything about him. Judge ye not and ye shall not be judged. |
| 456 | I do not know what come to mind. Nothing comes to mind at the name Jeff Skilling. |
| 457 | No words come to mind. |
| 458 | I am not familiar with that name. |
| 459 | I do not know. |
| 460 | I think all of them are guilty and should be tried. I do not know thier names. |
| 461 | He was one of the top executives. he was the one who faked being drunk or having problems in New York, he was hospitalized for awhile. I think all of the top executives knew what was going on. I feel bad for all of the shareholders and retirees. I just have not paid as much attention because I feel the government has been working to convict all of them. I hope they can take away all of their expensive homes. I understand there is a law that you cannot take away a persons home but if they put the money into homes in hopes of keeping them as invetments I hope they are |

| | Atlanta |
|---|---|
| | overturned when they are convicted. |
| 462 | I think guilty as charged for cooking and hiding the books |
| 463 | Nothing comes to mind. I do not know. |
| 464 | I know nothing about him. |
| 465 | Nothing comes to mind at the name Jeff Skilling. |
| 466 | I do not know who he is. |
| 467 | Nothing comes to mind. |
| 468 | nothing comes to mind |
| 469 | I got nothing. I do not know. |
| 470 | I am not familiar with it. |
| 471 | Nothing comes to mind. |
| 472 | Coniving comes to mind. |
| 473 | Nothing comes to mind at all. |

| | **Atlanta** |
|---|---|
| 474 | Nothing, I am blank. |
| 475 | I think he is guilty. |
| 476 | No words come to mind. |
| 477 | No, I do not recognize the name. |
| 478 | I believe that he was part of causing thousands and thousands of people lost thier money that they had. I think he should pay all his money. |
| 479 | Nothing comes to mind |
| 480 | I cannot recall. The name sounds familiar but I am drawing a blank. |
| 481 | i have no clue who that is. |
| 482 | Enron comes to mind, and that is all. |
| 483 | Nothing comes to mind. |
| 484 | I do not know. |
| 485 | I think he is another crook. |
| 486 | The word that comes to my mind is Enron. |

| | Atlanta |
|---|---|
| 487 | I do not know him |
| 488 | nothing, i do not know anything about him. |
| 489 | Nothing comes to mind. |
| 490 | I think he was one of them with that group. I am an investor and I know about Enron. He was from the Enron group, I think. I know that they are getting ready for a trial, but I did not follow it closely. I do not have Enron stock, if I did, I would have followed it more closely. That is what I do, I invest. |
| 491 | That is the one. He is a thief, a slick thief. |
| 492 | Nothing comes to mind. |
| 493 | Nothing comes to mind. |
| 494 | Nothing comes to mind. |
| 495 | nothing, i have no idea who that is. |
| 496 | Nothing comes to mind. |
| 497 | I do not know |

| [redacted] | Atlanta [redacted] |
|---|---|
| 498 | No words come to mind. |
| 499 | I do not know any. |
| 500 | I have no clue of the name |
| 501 | Nothing comes to mind. |
| 502 | Nothing comes to mind. I do not know the name. |
| 503 | I believe that is one of those names of those company guys in texas. |
| 504 | There are no words that come to mind. |
| 505 | I do not know who Jeff Skilling is. |
| 506 | None come to mind. |
| 507 | Nothing comes to mind. |
| 508 | He is the vice president of Enron. He and president Bush's assistant were involved in that. Other than that I am not sure. |
| 509 | I do not know |
| 510 | nothing in particular. i do not know what this is in reference to. |

| | Atlanta |
|---|---|
| 511 | i am not familiar with the name. |
| 512 | I do not know who he is. |
| 513 | Nothing comes to mind. |
| 514 | Nothing. It sort of rings a bell but I am clueless. |
| 515 | Nothing comes to mind at the name Jeff Skilling. |
| 516 | Nothing comes to mind. |
| 517 | nothing comes to mind. |
| 518 | 1 |
| 519 | I think he is guilty. |
| 520 | nothing, i am not familiar with that name. |
| 521 | Oh,yes, he is guilty too. |
| 522 | he was the accountant, or maybe the CFO. |
| 523 | I do not know about that either. |

| | Atlanta |
|---|---|
| 524 | I have heard the name.I think he is with enron |
| 525 | I think he was the chief financial officer for enron. |
| 526 | I have no idea who that is. |
| 527 | I do not know him. |
| 528 | I have no recollection. |
| 529 | Nothing comes to mihd as far as he is concerned. |
| 530 | I do not know. |
| 531 | I do not know. I have not heard of hte name at all. |
| 532 | Nothing comes to mind |
| 533 | I think he is guilty. |
| 534 | I do not know what comes to mind at the name Jeff Skillling |
| 535 | He is one of those executives of Enron, if i am not mistaken. I was reading his name in the paper. I do not know any more, I am sorry. |
| 536 | I do not know that name. |

| | Atlanta |
|---|---|
| 537 | I think theyare crooks. They steal money and have no morals. They are not sorry for their actions. I think he is manipulative and cowardice in his actions. |
| 538 | i am not sure who that is. |
| 539 | Nothing comes to mind at the name Jeff Skilling. |
| 540 | I do not know him. |
| 541 | He is another one of those executives. The word that comes to mind is 'not trustworthy'. |
| 542 | I have heard of him. |
| 543 | nothing, i do not know the name. |
| 544 | "Defendent", he is one of the defendents, that is all I know. |
| 545 | Nothing comes to mind. |
| 546 | Jeff Skilling was one of the underlings and I think he either was or will be convicted. |
| 547 | No words come to mind. |
| 548 | I have no idea who he is. I am not familiar with the name. |

| [illegible] | Atlanta [illegible] |
|---|---|
| 549 | I believe he is guilty and fradulant. I think he is unamerican. What he did was wrong. |
| 550 | I do not know. |
| 551 | I do not know. |
| 552 | Nothing comes to mind. I do not know their names. |
| 553 | Nothing, comes to my mind. I do not know. |
| 554 | I can think of anything |
| 555 | I do not know him. |
| 556 | I do not even know who he is. |
| 557 | i do not know. |
| 558 | I believe him to be guilty. That is all I know. |
| 559 | I do not know |
| 560 | Nothing comes to mind. |
| 561 | The name is not familiar to me. |

| | Atlanta |
|---|---|
| 562 | There is nothing that comes to mind. |
| 563 | I believe him to be a slimeball and he is unethical. That is all that comes to mind. |
| 564 | I do not know the name |
| 565 | None come to mind. |
| 566 | I do not know him. Was he one of those enron people. |
| 567 | I have never heard of Jeff Skilling |
| 568 | i know the name and I cannot match it to the right person. |
| 569 | I believe him to be guilty. I knew tpeople that worked with him. I believe it to be unethical. I feel sorry for the workers that have lost their pensions. |
| 570 | The word crook comes to mind. |
| 571 | I do not know him. |
| 572 | I do not know that either. |
| 573 | i have no clue, i do not recognize the name. |
| 574 | nothing comes to mind |

| | Atlanta |
|---|---|
| 575 | There is nothing that comes to mind. |
| 576 | Nothing comes to mind. I do not know. |
| 577 | No words come to mind. |
| 578 | I am not familiar with that name. |
| 579 | I think Guilty at Enron, he was quilty of defrauding stockholders and stealing money. |
| 580 | I do not know who that is. |
| 581 | He was the lead accountant of enron, and he is accussed of embessling money or cooking the books. |
| 582 | Nothing coes to mind at all. I do not know that name. |
| 583 | I do not know who what is. |
| 584 | Nothing comes to mind. |
| 585 | I have no comment on that. |
| 586 | There is nothing that comes to mind. |
| 587 | I am not familiar with that name |

| [illegible] | Atlanta [illegible] |
|---|---|
| 588 | I have never heard that name before. |
| 589 | I do not know who he is. |
| 590 | I have no comment on that at all. |
| 591 | He is an unknown person who I do not know. |
| 592 | I do not know. |
| 593 | nothing comes to mind. |
| 594 | Non |
| 595 | I think he is with enron |
| 596 | There is nothing that comes to mind. |
| 597 | nothing, i do not know that name. |
| 598 | Nothing, I am not familiar with that name at all. |
| 599 | nothing comes to mind. |
| 600 | Nothing at all. |

|  | Atlanta |
|---|---|
| 601 | I can not think of anything |
| 602 | I do not know what he is involved with. |
| 603 | There are none. There are no words that come to mind. |
| 604 | I have never heard of him. |
| 605 | Nothing comes to mind at the name Jeff Skilling. |
| 606 | Nothing comes to mind. |
| 607 | Was Jeff Skilling from Enron? There is nothing else I can say about him. |
| 608 | I can not think of anything. |
| 609 | Not much comes to mind when I hear the name Jeff Skilling. |
| 610 | i have never heard of him. |
| 611 | I do not know. |
| 612 | I do not know him or anything about him. |
| 613 | Nothing comes to mind. I do not know the name. |

| | Atlanta |
|---|---|
| 614 | I have no clue. |
| 615 | i do not know skilling |
| 616 | Jail and guilty are the words that come to mind at the name Jeff Skilling. |
| 617 | I do no know. I do not keep track of them. |
| 618 | He was part of Eron. |
| 619 | I think he was a "Gannis" which is Yiddish for "Thief". He stole from peoples retitements through his fraudlence. |
| 620 | No words come to mind, nothing at all |
| 621 | nothing comes to mind. |
| 622 | He is a cheat, because he is dishonest. |
| 623 | i do not know who that is. |
| 624 | When I think of Jeff, I think of Enron. I think he is guilty. He was the chief financial officer and he knew all about the false reporting. I believe his wife was involved. |
| 625 | Do not know. |

| [redacted] | Atlanta [redacted] |
|---|---|
| 626 | Nothing comes to mind. |
| 627 | I have nothing to say except that he is crooked. |
| 628 | I believe he was one of the people involved with enron. |
| 629 | I have no idea. |
| 630 | Nothing comes to mind. |
| 631 | I do not know who he is. |
| 632 | I don't know. |
| 633 | I do not know. |
| 634 | Never heard of him. |
| 635 | nothing at all. |
| 636 | He is bad. |
| 637 | I am sorry, who? I am not sure who that is. |
| 638 | the name does not ring a bell. |

| | Atlanta |
|---|---|
| 639 | Nothing comes to mind when I hear the name Jeff Skilling. |
| 640 | I never heard of him. |
| 641 | The first words that come to my mind are corporate greed, which means doing things that are considered unethical for ones' own benefit. |
| 642 | i heard it in a news report. |
| 643 | Nothing comes to mind. |
| 644 | I do not know who he is. |
| 645 | Nothing comes to mind when I hear the name Jeff Skilling. |
| 646 | I do not know who that is. |
| 647 | Nothing comes to my mind, I cannot really say. |
| 648 | Nothing comes to mind when I hear the name Jeff Skilling. |
| 649 | I do not  know anything about that. |
| 650 | I do not know him. |
| 651 | No words come to my mind. |

| | Atlanta |
|---|---|
| 652 | I think he is a crook. Jeff skilling is a dishonest person |
| 653 | When I think of jeff skilling I think who? |
| 654 | The only word that comes to mind when I hear the name Jeff Skilling is Enron. I think he was involved in the Enron collapse, but I am not certain and cannot think of any other words when I hear his name. |
| 655 | I am not familiar with the name jeff skilling. |
| 656 | I do not know who Jeff Skilling is. |
| 657 | There is nothing that comes to my mind when I hear the name Jeff Skilling. |
| 658 | I can not think of any word s that come to mind when I hear the name Jeff Skilling. I may have seen the name in the news paper , but I do not know anything about Jeff Skilling. |
| 659 | WhenI hear the name Jeff Skilling I think scumbag,crook,and money grubbing thief.It does not matter if he held a gun or wears a suit. |
| 660 | Crook He was one of the executives at enron. He made a good living out of cheating people. |
| 661 | The first thing that comes to mind when I hear the name Jeff Skilling is who is he. |

| | Atlanta |
|---|---|
| 662 | I am not sure who Jeff Skilling is right now. I do not know if he is from Enron. |
| 663 | there are not words that cxome to mind when I hear the name Jeff Skilling. I may have heard his name on the new, but I am not aware of who Jeff Skilling is . |
| 664 | The word that comes to mind when I hear the name Jeff Skilling is who. I have never heard of Jeff Skilling |
| 665 | I have never heard the name Jeff Skilling. |
| 666 | The first word that comes to mind when I hear the name Jeff skilling is Inron. What htat brings to mind is lost jobs, lsot retirement benifits, and lost wages. |
| 667 | The name means nothing to me. |
| 668 | Jeff Skilling is one of those people from Enron. It is a big corporation, and when I think about Jeff Skilling, I think of fraud. |
| 669 | I think Jeff Skilling was with Enron and he was found guilty of fraud or something. |
| 670 | None. Nothing at all comes to my mind. |
| 671 | the word that comes to mind when I hear the name Jeff skilling is who. I have no idea who the man is. |
| 672 | i do not know who Jeff skilling is |

| [illegible] | **Atlanta** [illegible] |
|---|---|
| 673 | I do not recall that name. |
| 674 | The only thing that comes to mind when I hear the name Jeff Skilling is Clinton. You see, he is the one who allowed Enron to happen. It was through his mismanagement, fear and inaction that allowed the Enron collapse to take place, his and Greenspan's. They turned a blind eye to Jeff Skilling and so of course he took all he could. Other than that it is Clinton's fault, nothing comes to mind when I hear the name Jeff Skilling. |
| 675 | There is nothing that copmes to mind when I hear the name Jeff Skilling.  I do not know anything about hi, |
| 676 | No words come to mind when i hear the name jeff skilling. |
| 677 | nothing comes to mind when I hear the name jeff skilling |
| 678 | Nothing comes to mind when you mention that name. |
| 679 | The only word that comes to mind when I hear the name Jeff Skilling is scumbag. I feel he is a scumbag because he is a criminal, a crook and a cheat. I believe that because I feel he broke the law by taking funds that were not his, by delibrately misleading people and by mismanaging retirement accounts for countless people. That is what I think of when I hear the name Jeff Skilling. |

| | Atlanta |
|---|---|
| 680 | I do not know that name at all. |
| 681 | The only thing that comes to mind is a skillet of eggs. |
| 682 | I do not know that name. |
| 683 | Nothing comes to mind. |
| 684 | I do not know the name Jeff Skilling |
| 685 | I have never heard of him. |
| 686 | I think he was the CFO. |
| 687 | I do not know. There is nothing that comes to mind when I hear the name Jeff Skilling. |
| 688 | I do not know the name Jeff Skilling. |
| 689 | he was an adminastrator. he was a good company man |
| 690 | The word that comes to mind when I hear the name Jeff Skilling is Thief. He stole from his own employee. He stole the retirement and pension plan. He also stole the confidence of the American public for big business. |
| 691 | THe name Jeff SkIlling was one of the Enron guys.But I do not feel comfortable to say I trhink that he is guilty. |

| | Atlanta |
|---|---|
| 692 | The only thing that comes to mind when I hear the name Jeff Skilling is executive. You see, I think he was an executive at Enron, or maybe WorldCom, but other than that, I have never heard of him. |
| 693 | No words come to mind when I hear the name Jeff Skilling. |
| 694 | Nothing comes to mind when I hear Jeff Skilling because I have never heard of him. |
| 695 | When I hear the name jeff Skilling I only one words comes to mind, fraud. I dont know why I thihk this. |
| 696 | when i hear the name jeff skilling i just know he is under inditment. |
| 697 | He is the accountant. He is the one who is already serving time. I do not know. |
| 698 | I do not know who that is and nothing comes to mind at the name Jeff Skilling. |
| 699 | I have never heard of Jeff Skilling so nothing comes to mind when I hear his name. |
| 700 | I do not know the name Jeff Skilling, so there really are no words that come to mind. |
| 701 | I have no idea who Jeff Skilling is. |
| 702 | Jeff Skilling is the name of one of the Enron executives |
| 703 | I can not think of any words when i hear the name jeff skilling |

| [redacted] | Atlanta [redacted] |
|---|---|
| 704 | I have heard the name and I think it has to do with something criminal but I do not know what. |
| 705 | There is nothing that comes to mind when I hear the name Jeff Skilling. I do not even recognize the name. |
| 706 | Enron. I think Jeff Skilling has a brother who does the news in Chicago. |
| 707 | I am not aware of the name Jeff Skilling. |
| 708 | The word fraud comes to mind at the name Jeff Skilling. I believe he is involved in committing a crime and that he was one of the top executives of the company. |
| 709 | When I hear the name Jeff Skiling I only think that he is one of them involved. |
| 710 | There are no words that come to mind when I hear the name Jeff Skilling. I do not know who that is. I do not recall seeing or hearing anything about Jeff Skilling on the news. |
| 711 | No words come to mind when i hear the name jeff skilling. |

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Supreme Court, U.S.
FILED
DEC 11 2009
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IN THE
# Supreme Court of the United States

JEFFREY K. SKILLING,
*Petitioner*,

v.

UNITED STATES OF AMERICA,
*Respondent*.

**On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

## JOINT APPENDIX VOLUME TWO
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# APPENDIX E

# DECLARATION OF RUSSELL SCOTT ARMSTRONG

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | ) | Crim. No. H-04-25 |
| | ) | (Lake, J.) |
| Plaintiff, | ) | |
| v. | ) | |
| JEFFREY K. SKILLING and RICHARD A. CAUSEY, and KENNETH LAY, | ) | |
| Defendants. | ) | |

## DECLARATION OF RUSSELL SCOTT ARMSTRONG IN SUPPORT OF DEFENDANT JEFFREY K. SKILLING'S MOTION TO TRANSFER VENUE

## I.
## INTRODUCTION

### A. Nature of Report

1. I submit this declaration in support of Jeffrey Skilling's motion to transfer venue.

2. I have been asked to review and analyze the news media coverage and publicity in Houston, Texas as it relates to Mr. Skilling, his former employer, the Enron Corporation, and to other information related to the Enron "scandal" and subsequent events, and to compare that coverage to news media coverage in Atlanta, Georgia; Denver, Colorado; and Phoenix, Arizona.

### B. Qualifications

3. I have been a professional journalist for 30 years. I am the executive director of the Information Trust, a Washington, DC-based organization devoted to improving the quality of journalism. I worked for *The Washington Post* as a reporter covering national security matters from 1976 through 1985. I have worked for many national newspapers, television and radio networks in the course of my career. Along with Bob Woodward, I wrote *The Brethren*, a narrative account of the Supreme Court from 1969 through 1976 describing the Court's inner workings. I assisted Bob Woodward and Carl Bernstein in the research and writing of *The Final Days*. I taught journalism as a visiting scholar at the American University School of Communication and have lectured on journalism and/or investigative techniques at various other institutions including: Brown University, Columbia University Graduate

School of Journalism, and Harvard University, among others.

4. I was qualified as an expert witness in the analysis of media coverage and editorial decision-making with regard to venue issues by Chief Judge Richard P. Matsch in United States v. Timothy James McVeigh and Terry Lynn Nichols. *See* United States v. McVeigh, 918 F. Supp. 1467, 1468- 50 (W.D. Okla. 1996).

5. I also have prepared and submitted expert testimony for introduction in other federal court cases on media coverage and editorial decision-making as they relate to venue issues in the United States District Court for the Central District of California and for the U.S. District Court for the Northern District of Alabama.

6. I was qualified as an expert witness in media coverage, use of confidential sources, and libel by Federal District Court Judge Ewing Werlein, Jr. in *MMAR Group. Inc. v. Dow Jones & Co., Inc.*, 987 F.Supp. 535 (S.D. Tex. 1997), by Judge Geoffrey Alprin in *Prentice v. McPhilemy*, 27 Med. L. Rptr. 2377 (D.C. Sup. Ct. 1999), and by Texas District Court Judge Joseph H. Hart in *Jack Taylor, et al. v. Barry Switzer, et-al.*, (No. 4-91-001; 126th District Travis-County). Additionally, I have been qualified as an expert witness on journalistic practices and procedures by federal District Judge Joseph Young in the case of *U.S. v. Morison*, 604 F. Supp. 655 (D. Md. 1985).

7. During the last 30 years, I have covered and reported on scores of federal investigations (including those involving financial crimes) involving

the Department of Justice, the Federal Bureau of Investigation, and the Securities and Exchange Commission, was the senior investigator on the Senate Select Committee on Presidential Campaigns (The Senate Watergate Committee) and, as such, investigated the conduct and practices of the FBI, the Department of Justice and the United States Attorney for the District of Columbia. I have a working journalist's knowledge of financial derivatives, hedge funds, mark to market accounting, and special purpose entities.[1]

## C. Materials Surveyed

8. In preparing this report. I conducted an extensive and comprehensive review of the available news media coverage and publicity (by newspapers, network affiliated broadcast television stations, dominant local websites, and other assorted local media) of Enron-related issues in the four venues just mentioned for the period January 1, 2001 through late October 2004. For further context, I also reviewed the coverage of "national newspapers of record" -- the New York Times, the Wall Street Journal, and the Washington Post -- and the coverage of the four major television broadcast networks' evening news broadcasts with respect to the same issues for the same period.

## D. Overview

9. My analysis:

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[1] Further details of my qualifications, including publications, are set forth in my curriculum vitae attached as Armstrong Exhibit ("Armstrong Ex:') 1.

a. compares the Houston, Atlanta, Denver, and Phoenix print, television, and other news coverage of Enron, and particularly of Jeffrey Skilling, Ken Lay, and Richard Causey, in terms of frequency of reporting, editorial content, theme and imagery, level of detail, sourcing, prominence of display, and intensity of emotional impact;

b. identifies the manner by which the local news media through a combination of the measures described in paragraph 9(a), traditionally identify common community problems-and describe them to the community. The local news media in Houston, unlike that media in the other, three venues, have identified the Enron "scandal" as a local-problem with a perceived community need to resolve damage to a variety of Houston victims.

c. describes how local news media provide a "feedback loop," in which the local media's perceptions of the community's values and interests are developed and communicated back to the community, reabsorbed and evaluated by the local media through letters to the editor, opinion commentaries, cyber equivalents such as "blogs," and media interviews of community leaders and individuals, and then re-published and re-broadcast to the community. This cycle clarifies, amplifies and reinforces community values and interests;

d. discusses how, in times of crisis or widespread public trauma, of which the demise of Enron is a prime example, it is traditional for the local news media, often led by the community's major newspaper, to reassure the community that the appropriate community institutions have identified the problem and are working to solve it; and

e. describes how in the case of the Enron scandal, the Local news media in Houston have sought to inform and "reassure" the community that federal prosecutors: (a) have woven together the details of the criminal activities and misfeasance inside the Enron scandal; (b) have identified those "responsible" as the former top leaders of Enron, Skilling and Lay, and (c) will convict them with the testimony of their former subordinates at Enron, who will link Skilling and Lay to crimes and activities to which the subordinates have already confessed in their own guilty pleas in this manner, the local news media in Houston, and in Houston only, have communicated and amplified a wide-spread community expectation that the "details" of Enron-related crimes are known and verified, indeed are catalogued regularly in the Houston Chronicle, and that Skilling and Lay will be prosecuted and held responsible for what has transpired.

## E. General Conclusions

10. I have found a dramatic difference, both quantitatively and qualitatively, between the local news media in Houston and the local news media from three comparable venues, Atlanta, Denver, and Phoenix, with respect to coverage of Enron and particularly two of the defendants in this case, Jeffrey Skilling and Ken Lay. The Houston Chronicle, the major local paper with considerable journalism resources, has played the customary role in the local news market of defining the elements of the Enron story as major issue for the Houston community and has done so by devoting an unusual concentration of labor and intellectual focus over an extended period.

11. The local Houston television news media have largely followed the Chronicle's lead, both with respect to following the same editorial theme and in dedicating more resources than it customarily provides to local issues. Just as the Chronicle has consistently emphasized its coverage with unusually prominent presentations and placement of Enron-related news, Houston television news directors have provided viewers with extensive video coverage of Enron and its former chief executives, enhanced by a variety of special features emphasizing its importance to the community.

12. In the comparable venues I examined, none of the local news media, either in print or television, has devoted anything approaching the commitment of extra resources, attention, or emphasis I observed in Houston. In these other local markets, the news media's investment in the coverage of Enron-related stories did not go beyond that which is normally given to an important national story. None treated it as an important local story.

13. Through consistent editorial emphasis, intense presentation and prominent display, the local Houston news media collectively have (a) informed and sensitized their readers and viewers to the plight of the perceived victims of Enron, including the considerable dislocation suffered throughout the Houston community, (b) identified those perceived to be responsible for an expanding litany of crimes, and (c) actively encouraged a community-wide expectation that a careful and diligent prosecutorial effort is not only underway, but will also result in convictions of the most

prominent perceived culprits, Skilling and Lay, in order to bring closure to the aggrieved Houston, community. Metaphorically, the Houston media portrays the prosecutors as weaving together evidence to solve for Houstonians the puzzle of "what happened at Enron and who is responsible?," a process that includes the trial -- and conviction -- of these defendants.

14. This concentration by the local Houston news media on the prosecutors piecing together a puzzle includes the regular use of legal experts and others to interpret for news consumers the pace and degree of progress of the investigation(s) and prosecution(s), the relentless accumulation of details by the print media, the unusually intense placement and prominent display of Enron-related news content. It is unique to Houston. In Atlanta, Denver, and Phoenix, there is no similar indication of the community-wide expectation found in the Houston news media that Skilling and Lay are to be brought to "justice."

## II.

## DEMOGRAPHICS

15. In this case, I was asked to assess the media's potential impact on four communities: (1) the Houston Division of the Southern District Texas (hereinafter "Houston" or the "Houston venue"); (2) the Atlanta Division of the Northern District Atlanta (hereinafter "Atlanta" or the "Atlanta venue"); (3) the Denver Division of the District Colorado (hereinafter "Denver" or "Denver venue"); and (4) the Phoenix Division of the District Arizona (hereinafter

"Phoenix" or "Phoenix venue") (collectively, "the other venues").

16. I began my analysis by identifying the dominant principal newspaper(s), locally affiliated network television stations (Le., the local affiliates for ABC, CBS, NBC, Fox), and prominent independent television stations for the counties comprising the jury pools for each of the relevant venues.[2] The dominant newspapers and television stations in each venue are identified in the table below:

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[2] Jury pools for the Houston Division of the Southern District Texas are selected from the counties of Austin, Brazos, Colorado, Fayette, Fort Bend, Grimes, Harris, Madison, Montgomery, San Jacinto, Walker, Waller, and Wharton. Jury pools for the Atlanta Division of the Northern District Georgia are selected from the counties of Cherokee, Clayton; Cobb, deKalb, Douglas, Fulton, Gwinnett, Henry, Newton and Rockdale. Jury pools for the Denver Division of the District Colorado are selected from the counties of Adams, Arapahoe, Boulder, Broomfield, Chaffee, Clear, Creek, Douglas, Elbert, Park, Gilpin, Grand, Jefferson, Lake, Larimer, Logan, Morgan, Park, Phillips, Sedgwick, Summit, Teller, Washington, Weld and Yuma. Jury pools for the Phoenix Division of the District Arizona are selected from the counties of Gila, La Paz, Maricopa, Final and Yuma. *See* Armstrong Ex. 2-5 (jury plans)

| Venue[3] | Dominant Newspaper(s) | Television Stations |
|---|---|---|
| Houston | Houston Chronicle | ABC – KTRK<br>CBS – KHOU<br>NBC – KPRC<br>Fox – KRIV<br>Independent – Hou24-NS24t |
| Atlanta | Atlanta Journal-Constitution | ABC - WSB<br>CBS - WGCL<br>NBC - WXIA<br>Fox - WAGA<br>Independent – WTBS |
| Denver | Denver Post<br>Rocky Mountain News[4] | ABC – KMGH<br>CBS – KCNC<br>NBC – KUSA<br>Fox – ICDVR<br>Independent - N/A |
| Phoenix | Arizona Republic | ABC – KNXV<br>CBS – KPHO<br>NBC – KPNX<br>Fox – KSAZ<br>Independent - KTVK |

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[3] *Id.* Exs. 3-13 (Comparability Chart; Media Week and ABC data).

[4] The Denver Post and Rocky Mountain News entered into a joint publishing agreement in 2001, operate separately Monday through Friday, and publish jointly on Saturday and Sunday.

17. As demonstrated in the table attached as Exhibit 15, these media collectively serve the geographic area in which vast majority of the residents of the selected counties. In all four venues examined, local television station news shows reach at least 95% of the respective geographic areas. In the Houston, Atlanta, and Phoenix venues, the dominant newspapers reach 95% or more of the area. In the Denver venue, the two newspapers reach roughly 2/3 of the area. Two outlying counties, Larimer and Weld, comprise the 'majority of the portion of the Denver venue not covered by the newspapers. It seems highly unlikely that residents in those outlying counties would receive more coverage of Enron-related stories than residents in the areas which the newspapers reach.

## III.

## COMPARISON OF MEDIA IN HOUSTON, ATLANTA, DENVER AND PHOENIX IN TERMS OF THEIR TREATMENT OF ENRON AND THESE DEFENDANTS

### A. Coverage of the Rise and Fall of Enron

18. Prior to Fall 2001, the Chronicle, like nearly all of Houston, viewed Enron as an innovative, exciting "can't miss" company and its executives, especially Skilling and Lay, as business and cultural figures with demi-god status in the local and national business community.[5] News stories and

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[5] Declaration of David J. Marroso in Support of Defendants' Motion to Transfer Venue Exhibit ("Marroso Ex.') 79, 81, 84 (*Houston Chronicle*). Rather than submit duplicate exhibits, I refer to newspaper articles cited in this report by their designations in Mr. Marroso's declaration.

editorial commentary compared Lay to a local patriarch and community leader in the images of legendary Houstonians Jesse Jones and Ben Love, even suggesting that he run for Mayor.[6] Skilling, too, was heaped with praise. In 2001 alone, the Chronicle:

- Reported that the Texas eComm Association had honored Skilling for his tremendous "contributions to the state's Internet economy";
- Touted Skilling's membership on the "Luminous" Greater Houston Community Foundation, which manages and assures proper usage of various community funds;
- Covered Skilling's announcement that Enron donated $1 million for scholarships to Houston area high school students;
- Observed that Skilling had transformed Enron from a "stodgy" company into a market "player" that "keeps raising [the] bar," and that Skilling's "revolutionary" management philosophy allowed Enron and its thousands of Houston employees to flourish;
- Repeatedly referred to Skilling in covering "Energy Giants Have a Season to Remember";

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[6] *Id.* Exs. 9, 86-88 (*Houston Chronicle*)

- Identified Skilling as one of the "100 Who's Who" of Houston; and
- Likened Skilling and Lay to the exalted, saying their new offices will "hover above, giving the chieftains a heavenly view of their realm."[7]

19. Prior to the fall of 2001, the principal papers in the other venues studied -- The Arizona Republic, Atlanta Journal-Constitution, Rocky Mountain News, and Denver Post -- ran stories about Enron reporting on the energy giant's dramatic successes, the rise and fluctuations of its stock value on Wall Street and its role in the 2001 West Coast energy crisis. They did not report nearly as often and rarely treated Enron with the sort of community reverence and awe that characterized Enron's coverage in the Chronicle.

20. Skilling was mentioned only rarely in local media outside Houston, and in those few instances when he was referenced, Skilling was portrayed as a savvy businessperson or a donor to political causes, but without the celebrity, "rock star" status that characterized his Houston image. In January and May 2001, the Atlanta-Journal Constitution described Skilling as "among the prominent $100,000 contributors" to President Bush's campaign and as one of the Business Press's "top 5 CEOs."[8] The Arizona Republic reported on Skilling as the target of a pie heaved by an energy activist when he defended Enron's role in the

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[7] *Id.* Exs. 89-96 (*Houston Chronicle*).

[8] *Id.* Exs. 118; 231 (*Atlanta Journal-Constitution*).

California energy market.[9] So unconcerned with the former-CEO were the other papers that when Skilling resigned from Enron in August 2001, it was treated to only cursory mention in the business sections of the papers in Atlanta, Denver and Phoenix.[10]

21. Even after stories emerged nationally questioning Enron's economic viability and after investigations of allegations of wrongdoing surfaced in the wake of Fastow's dismissal, a Chronicle columnist stood by Enron, assuring Houston citizens -- many of whom owned Enron stock -- that the company would "weather the storm." The coverage of the Houston Chronicle and most other local media in Houston continued to give Enron the benefit of the doubt well after questions had been raised in the national business press.

> Earnings remain healthy. Despite the stock price cratering, Enron's earnings remain strong and growing, with a 32 percent increase in earnings per share in the last quarter. It's still a company with innovative people who have shown they can turn ideas into

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[9] *Id.* Ex. 232 (*Arizona Republic*).

[10] *Id.* Exs. 233, 234, 235 (*Arizona Republic, Atlanta Journal Constitution, Denver Post*).

> profitable businesses.
> That's why the current
> problems will blow
> over[11]

22. On December 2, 2001, Enron declared bankruptcy. Shortly thereafter, under new editorial leadership, the Chronicle began to refocus its editorial attention and analysis to address the questions which had surfaced widely elsewhere. Local criticism of the Chronicle's inattention to the nature and magnitude of the Enron -- and community crisis -- expanded to national criticism.[12] A new editor was hired and staffing and editorial deployments shifted in the two months prior to his arrival in February 2002.[13]

### B. Deployment of Resources

#### (i) Print Media

23. Enron was and is a story of national significance. National newspapers, such as the New York Times, the Wall Street Journal, and, to a lesser degree, the Washington Post, have covered the financial, industrial, political, and criminal aspects of the Enron story, but not at all to the same degree or with the same emphasis as the Houston media.

24. Editors at the major metropolitan newspapers in Atlanta (Atlanta Journal

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[11] *Id.* Ex. 251 (*Houston Chronicle*).

[12] *Id* Ex. 124 (*Houston Press*) ("The most obvious change so far is the departure of longtime business columnist Jim 'Enron's Great!' Barlow.").

[13] *Id.* Ex. 124 (*Houston Press*) ("The most obvious change so far is the departure of longtime business columnist Jim `Enron's Great!' Barlow.").

Constitution), Phoenix (Arizona Republic), and Denver (Denver Post and Rocky Mountain News) also have allocated their journalistic resources to the Enron story, but, understandably, in the manner they believe is most appropriate to serve their communities. This has meant as high a quality of coverage as they can produce using news wire and news service copy on a regular basis and assigning fewer reporters producing shorter, less detailed stories less frequently on fewer Enron topics than has been the case in Houston.

25. Because the local Houston news media see Enron differently -- as their local story -- they have emerged in a singular class when it came to dedicating resources and attention to Enron coverage.

26. As the Houston Chronicle refocused its coverage between late 2001 and early 2002, it sought to address the questions about the sudden and jolting demise of Enron to which Houstonians needed "answers." As the major media outlet in the venue, the Chronicle sought to answer several questions, including, among others, (a) what was the damage to Enron employees who lost their jobs and retirement savings; (b) what was the human impact and how great was the community's dislocation; (c) how had the decline come so abruptly, and, most important, (d) who was responsible? The Chronicle deployed enormous resources, both absolutely and in comparison to papers in the other communities, to answering these questions.

27. From late 2001 through mid-2003, between 8 and 12 Chronicle reporters worked the

Enron story full-time or nearly full-time. During that same timeframe, the Atlanta Journal Constitution never had more than half that many reporters dedicated full-time to Enron, and the other papers surveyed had fewer than the Journal Constitution.

28. Moreover, all four papers began scaling back their deployed resources much earlier than the Chronicle. Even today, it appears that at least 3 Chronicle reporters have been devoting full-time or nearly full-time to Enron. None of the papers I examined currently has a single reporter covering the story full-time.[14]

29. The production rates are equally impressive. The Chronicle's full-time reporters chum out between 30 and 50 Enron related stories per month, approximately 5 to 8 times the number of articles written by all reporters for the other four papers combined."[15]

30. Thirty-three (33) Chronicle reporters have written 20 or more Enron stories since December 2001. The Atlanta Journal-Constitution had less than one-quarter that many reporters (8) write 20 or more Enron stories. The Arizona Republic, Denver Post, and Rocky Mountain News had one-fifth the number of Chronicle reporters write at least 20 Enron articles (6, 5, 6, respectively).[16]

31. Reporters from several different sections, of the Chronicle contributed to the paper's

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[14] Armstrong Ex. 16.

[15] *Id.* at Ex. 16.

[16] *Id.* at Ex. 16.

Enron coverage a phenomenon that is extremely rare, not only because it spreads thin the reporting staff, but also requires supervision of multiple editors over the same extended period.[17]

32. Such a level of effort is seen only very rarely at even the largest national daily newspapers. Even then, in cases such as the 9/11 terrorist attacks, foreign wars and tragic events, it is extremely rare to have such large deployments extended for so long. I do not recall another instance where a local paper dedicated as many resources to a single topic over such an extended period of time as the Houston Chronicle has dedicated to Enron.

### (ii) Television

33. Houston's television media, unlike the television media in the other venues examined, demonstrates an effort and commitment to add to the depth, prominence, and attractiveness of its Enron coverage.

34. Compared to television in the other venue, Houston's television media (a) puts more live coverage on the air, which requires dispatching more field crews and correspondents with satellite links back to the station; (b) conducts more interviews with experts and commentators; (c) covers more press conferences; (d) produces more multiple individual news segments within a single news show, which requires assigning multiple reporters covering different aspects of the story; (e) updates information more regularly, which requires rewriting news budgets and generating new scripts

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[17] *Id.* at Ex. 16.

between shows in a single day; (f) produces and uses more "teasers" to lead viewers into segments across news time slots from prior shows; (g) creates more special graphics, including bullet point charts and distinctively designed special "Enron" story logos; (h) utilizes more special camera techniques not normally seen in daily television news, including zoom lens shots and slow motion; and (i) employs more file footage, such as footage of defendants' "perp walks," so that it will match the length of voice-overs, fades and unusual splices to make segments blend better and capture reader attention.

35. These features require more production time and bigger budgets and are indicative of an editorial decision by the Houston television station's news directors that the

Enron story is extraordinarily important to viewers who will watch more often and will bring in ratings and ad revenue.

### C. Intensity of Coverage

#### (i) Print Media

36. By every measure, since December 2, 2001, the day Enron declared bankruptcy, the Chronicle has devoted more reportorial resources over a longer time to produce a far greater number of stories about Enron and Skilling, Lay, and Causey than any of the four major papers servicing the alternate venues. Indeed, on most Enron related topics, the Chronicle has run several times the

number of stories in the other four papers combined.[18]

37. Between December 2, 2001 and October 15, 2004, stories involving Enron (not including sports-related stories mentioning Enron Field) appeared in 4,361 Houston Chronicle articles, 3.4 times the number of stories appearing in the Atlanta Journal-Constitution (1,277), 6 times the number in the Rocky Mountain News (720), 7 times the number in Denver Post (637), and 8 times the number in the Arizona Republic (527). *See* graph below.[19]

38. In that same time frame, 435 articles discussing Mr. Skilling appeared in the Chronicle, more than 4 times the number of such articles appearing in the 4 other papers combined. (Atlanta Journal-Constitution 46, Denver Post 25, Rocky Mountain News 19, Arizona Republic 14).[20]

39. In 2004 alone, there were 637 Enron related articles in the Chronicle (not including sports-related Enron Field mentions), 5.2 times the number of such stories in the Atlanta Journal-Constitution (121), 7.3 times the number that appeared in the Rocky Mountain News (87), 10.4 times the number that appeared in the Denver Post (61) and 15.5 times the number that appeared in the Arizona Republic (41). *See* graph below[21]

**[GRAPH OMITTED]**

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[18] Substantial additional data to the same effect can be found at Armstrong Ex. 14.

[19] *Id*. Ex. 14.

[20] *Id*. Ex. 14.

[21] *Id*. Ex. 14.

40. Just this year the Chronicle has published 189 articles about Skilling, Lay, or Causey, almost 3 times the number of similar stories in the 4 other papers combined (Atlanta Journal-Constitution 28, Denver Post 16, Rocky Mountain News 17, Arizona Republic 6). *See* graph below.[22]

**[GRAPH OMITTED]**

### (ii) Television

41. As mentioned previously, print drives the direction and emphasis of television news. Television news editors dispatch more resources, allocate more air time, cover more press conferences, interview more experts, create more special effects, and utilize more "teases" for topics the print media deems "newsworthy" to the local community.

42. Each television station airs multiple news broadcasts per day (e.g., 5:00 a.m., 6:00 a.m., 12:00 p.m., 5:00 p.m., 6:00 p.m., 10:00 p.m.), and locally newsworthy stories are often covered on multiple broadcasts per day.

43. As was the case in print, the number of Enron related television news segments in Houston dwarfs the number in Atlanta, Denver, and Phoenix.[23] Also like print, the interest in Enron,

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[22] *Id.* Ex. 14. Focusing on Mr. Skilling alone produces similar results. In the first 10 months of 2004, the Chronicle ran 129 stories related to Skilling, 5 times as many stories about Skilling that ran in the other 4 papers combined (*Atlanta Journal-Constitution* 12, *Denver Post* 7, *Rocky Mountain News* 4, *Arizona Republic* 4).

[23] Quantitative data for television media incorporated in this report is derived from Bacon's Information, Inc. ("Bacon's"), a

Skilling, and Lay of television news media in those three venues has faded over the past few years. This is not the case in Houston. In 2004 alone, there have been more than 6,000 Enron-related news segments in Houston, 10 times the number of Enron-related news segments in the other three venues combined.[24]

44. Also in 2004, there have been more than 1,400 news segments in Houston about Skilling, more than 16.4 times the number of Skilling-related news segments in the other three venues combined. *See* graph below.[25]

## D. The Houston Chronicle's Website – SPECIAL REPORT: ENRON

45. In the digital age, it is becoming more and more common for media outlets to host internet websites. For the past few years, I have visited, reviewed, and studied media-hosted websites, such as the New York Times (www.nyt.com) and CNN (www.cnn.com). I visit local television websites from major local markets periodically and am familiar with the offerings of several dozen such websites in the past two years. I visit and use each of the major network news websites though story links almost daily and have tracked media data regarding network news for the past five several years on The Vanderbilt Television News Service (http://tvnews.vanderbilt.edu), which collects

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company specializing in collecting information from television broadcasts from around the country and for certain periods from Video Monitoring, a similar service available through Lexis/Nexis. *See* Armstrong Ex. 14.

[24] Armstrong Ex. 14. "News segments" include broadcasts and teases.

[25] Armstrong Ex. 14.

summaries of national evening news broadcasts from the four major television networks.

46. The Chronicle is no exception. It hosts its own dedicated website with a prominent section entitled "SPECIAL REPORT: ENRON." (www.chron.com/content/chroniele/ /specia1/01/enron/index .html).

**[GRAPHIC OMITTED]**

47. SPECIAL REPORT: ENRON is stunning. It is the most intensive and sophisticated interactive media tool focused on a single company or event that I have ever seen produced by a news media organization. The only other media-hosted websites that even approach this thoroughness have been devoted to coverage of local natural disasters or ongoing community traumas, such the recent Florida hurricane season, the Oklahoma City Bombing, or the aftermath of the 9/11 terrorist attacks.

48. Among other things, SPECIAL REPORT: ENRON features:

- an archive of Houston Chronicle Enron coverage since October 2001, which includes several thousand separate articles. (http://wwvv.chron.com/content/chro niele/specia1/0 I /enron/archive/index .html);
- detailed personal and business profiles of the so-called "key players," including Skilling and Lay- - even to the extent of reproducing high school yearbook photographs;

- animation of various transactions at the heart of some of the Enron criminal trials, such as the Enron-UM-Merrill Lynch barges transaction (http://www.chron.com/cs/CDA/ssistory.mpUspecial/eru-on/2872168, click "picturing it");
- indictments, transcripts of argument, testimony, exhibits introduced at the Barges trial with downloadable PDF images, (http://www.chron.com/content/chronicle/specia1/01/enron/popups/barge-govexhibits.html);
- interactive polls such as "What is Houston Best Known For?" (Enron 64%) (no longer available on-site);
- an "Enron Quiz," billed as "Are you an Enron junkie or merely well-informed?" and in which if you answer 15 out of 15 correctly you receive a message, "You must be a laid-off Enron employee." (http://www.chron.com/content/chroniele/special/01/enron/quiziquiznu.html);
- a "Prosecution Scorecard," which also appears in the print version of some editions of the Chronicle, tracking who has been charged with what crimes and the disposition (if any) of their cases

http://Www.chron.com/content/chroniele/special/01/enron/index.html.[26]

49. I have reviewed websites hosted by other media from Houston, Atlanta, Denver, and Phoenix. None has anything approaching even a fraction of the organized, searchable Enron-related information available on the Chronicle's website.[27]

## E. Qualitative Differences

50. Qualitative features of news coverage strongly impact the reader/viewer because placement of stories, depth of coverage, and, importantly, consistent use of certain recurring editorial themes explicitly and implicitly convey the news judgment of what it is a reader/viewer should be interested in, why the reader/viewer should care, and what outcome or resolution of an issue is deemed likely and desirable by prominent leaders, public officials or specialized experts.

51. The Houston Chronicle and local Houston television news outlets differ significantly from their counterparts in Atlanta, Denver, and Phoenix on each of these qualitative measures.

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[26] Attached as Armstrong Ex. 24 is a "Virtual Walk-Through" of the Chronicle's website. The Walk-Through is broken down into five routes, 1 through 5, designated by tabs. Each route begins from the same place -- SPECIAL REPORT; ENRON's first page as of November 3, 2004 — and weaves its way through the website going in different directions. Of thousands of different permutations, the Walk-Through demonstrates only a few, yet the depth of coverage is immediately apparent. Attached as Armstrong Ex. 27 is a multi-media DVD presentation capturing these features from the Chronicle's website, along with other aspects of the Houston media.

[27] Armstrong Ex. 25.

Through prominent story placement, concentrated reporting on events and people in elaborate detail, and consistently repeating certain thematic portrayals of events and their current status, the local Houston news media reassures the Houston community that the prosecutorial Task Force is methodically investigating criminal conduct at Enron and is progressing up the line toward the successful prosecution of those most responsible for the trauma inflicted on the community by Enron -- Jeff Skilling and Ken Lay.

52. The depth of this difference in coverage is a function of the fact that in Houston, unlike most of the rest of the country, the Enron bankruptcy and its impact is both a national and local story.[28] Enron's bankruptcy and associated problems have rippled through Houston at many levels and is perceived to have affected its residents uniquely. Based on the accounts of various media, the Houston community, more than any other place in the country, feels it bore the brunt of Enron's demise. This community-wide perception is not reflected in the reporting of the news media in Atlanta, Denver, and Phoenix.

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[28] New York as the financial center of the country and Washington as the political nexis for government regulation and law enforcement could be described as having something approaching a "local story" interest although the events surrounding the fall of Enron have only had impact or aggravated a small percentage of the two cities denizens.

### (i) Placement, Prominence, and Interconnectedness of Stories

53. Placement of one or more articles on the front page of a paper, and to a lesser extent, the front pages of sections, page jumps to groups of articles nested together on full pages without advertising, the regular use of elaborate explanatory graphics, front page keys, recurring custom story logos and the frequent use of pictures in elaborate layouts and other such features reflect a considered editorial judgment that a story is more important to its readers-than other stories.

54. In the first ten months of 2004, the Chronicle ran more than 69 front page stories which dealt with "Enron." The four other papers combined ran less than 10.[29]

55. Many of the Chronicle's front-page Enron stories were nested with other articles. For example, on April 30, 2004, Lea Fastow, ex-Enron employee and wife of former Chief Financial Officer, Andrew Fastow, pled guilty to charges of tax fraud. The Chronicle ran a front page story, continuing on page 8A, entitled "Lea Fastow gets deal with gets, with reduced charge." The article about Ms. Fastow shared the front page with articles about the White House, 9/11, and the War in Iraq. Of the 4 papers in the other venues I examined, only the Atlanta Journal Constitution reported on Ms. Fastow's plea on April 30, and in that paper, the story comprised a

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[29] *Id.* Ex. 14.

total of a one square-inch block of text on page E2's "Daily Briefing" section.[30]

56. Also on April 30, 2004, the Chronicle ran a separate Enron story unrelated to Ms. Fastow's guilty plea. This article concerned the government's request to alter Skilling's bond conditions as a result of an alleged incident that had occurred in New York several weeks earlier. That article, entitled "Prosecutors step up Skilling fight; He won't adhere to rules, they say," displayed, in a prominent inset, a photograph of quote from an Enron Task Force prosecutor.[31] None of the other four papers surveyed ran a story on April 30, 2004, about Skilling. Below is are images of the relevant pages from the Houston Chronicle and Atlanta Journal-Constitution on April 30, 2004 displaying difference in prominence and placement.[32]

**[GRAPHIC OMITTED]**

57. On certain days, the Chronicle dedicated an enormous percentage of non-advertised space to Enron and Enron related stories. For example, on July 9, 2004, the day Ken Lay was indicted, the Chronicle dedicated three-quarters of its front page, 2 other full pages, and substantial

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[30] *Id.* Ex. 17 (images of papers exhibit).

[31] Mat Ex. 17.

[32] Attached as Exhibit 17 are similar images for each of the 5 surveyed papers on selected dates in 2002, 2003, and 2004, along with 8.5" by 11" copies of each newspaper page to facilitate viewing.

portions of 4 other pages, all in the front or business sections, to this story.[33]

### (ii) Depth of Coverage

58. Not only has the Chronicle run more articles about Enron, Skilling, Lay, and Causey, its articles are more detailed than the stories in the Arizona Republic, Rocky Mountain News, Denver Post, and Atlanta Journal-Constitution. The same is true for Houston's television news coverage compared to that of the other venues.

59. When stations in Atlanta, Denver, and Phoenix run segments on Enron or one of Enron's executives, the segment generally is cursory and provides nowhere near the level of detail provided by Houston stations. For example, each of the local stations in the other venues covered the national stories when Mr. Skilling first, and Mr. Lay several months later, surrendered to authorities prior to arraignment. For the most part, those segments lasted between 30 seconds to 1 minute and typically provided factual "who, what, where" detail.[34]

60. Houston coverage, in stark contrast, followed each man as he drove from his home to FBI headquarters, to the court, and back home, often providing "color" commentary --such as interviewing former Enron employees for comment on the day's events -- absent from the coverage in the other venues studied.[35]

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[33] Attached as exhibit 18 are images of the relevant pages from the July 9, 2004 edition of the Chronicle.

[34] *Id.* Ex. 19.

[35] *Id.* Ex. 19.

61. The Houston media regularly reports aspects of Enron related criminal trials that the other media surveyed rarely touch, such as:

- Names of judges.[36]
- Hometowns of counsel for Enron defendants, particularly when not Houston or Texas, connoting "outsider" status.[37];
- Names of transactions alleged to be fraudulent.[38]
- Names of witnesses and defendants in related matters.[39]

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[36] The Chronicle identified Judge Lake as presiding over an Enron-related trial more than 30 times compared to a total of 2 in the other papers combined. Of the 86 television news broadcasts where Judge Lake's name was mentioned, all 86 were from local Houston stations. *See* Armstrong Ex. 14.

[37] Between March and May 2004, the Chronicle ran 6 stories identifying Daniel Petrocelli as Jeff Skilling's "California" or "Los Angeles" lawyer. Marroso Exs. 212, 239, 241, 280, 250, 251. Only one other paper -- the Atlanta Journal-Constitution — has mentioned Petrocelli and it did not identify him as a California or Los Angeles lawyer. *See also* Armstrong Ex. 14.

[38] Andrew Fastow's partnerships LJM and LJM2 have been identified in 155 Chronicle articles, but only 9 times in the Arizona Republic, Denver Post, Rocky Mountain News, and Atlanta Journal-Constitution combined. The Chronicle mentioned "Raptor" 53 times compared to 10 times total in the four other papers combined. All 39 news broadcasts mentioning either "LJM" or "Raptor" occurred on local Houston stations, and many explicitly described those financial vehicles as illegal or fraudulent. *See* Armstrong Ex. 14.

[39] Michael Kopper appears in more than 100 Houston Chronicle articles, compared to less than 20 for the other three venues combined. Similar figures emerge for Ben Glisan: his name appears in more than 1.00 Chronicle articles and less

62. In isolation, these details could be innocuous, but as is the case in extraordinary events which reach everyone in the community, such as the bombing of the Oklahoma City federal building, the sheer repetition of details, as well as their interconnectedness with one another, creates the impression that the Houston Community is receiving an "authoritative account" unlike that to which they are normally accustomed from reading coverage of other topics, and unlike that to which readers in Atlanta, Denver, and Phoenix are accustomed with respect to the criminal trial of these Enron executives.

(iii) Story Themes and Content:

63. One of the most important qualitative components -- and one of the biggest disparities between the Houston media and the media of Atlanta, Denver, and Phoenix -- concerns repetitious story themes.

64. Over the course of publishing thousands of articles in the past 3 years about one company and its executives standing trial, the Chronicle has developed certain editorial themes that consistently appear in its articles. Often introduced through a catchy phrase ("Fall of Enron")[40] or graphic (multi-colored "E" on an angle), three such themes stand out: (1) sympathizing with and rallying around the perceived victims of Enron; (2) use of the pejorative to describe defendants and

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than 10 in the other four papers combined. *See* Armstrong Ex. 14.

[40] Over 600 Chronicle stories include "Fall of Enron" in the headline. *See* Armstrong Ex. 14.

(3) the notion that media and prosecutors are piecing together a "puzzle", where all building blocks lead to the trial, and presumptive conviction of the "big fish," Skilling, Lay, and Causey.

65. The Houston television news media has adopted these same themes and continue to drive them home through such vivid and repeated visual imagery as replaying footage of Skilling's (or Fastow's) "perp walk" when details about Skilling's upcoming criminal trial are discussed.

66. These themes are not found to any discernible degree in any of the other three venues surveyed.[41]

67. *Perceived Victimization of Houston Through the Human Interest Story.* One of the Chronicle's primary editorial themes since December 2, 2001, has been the perceived victimization of the Houston community due to the Enron bankruptcy. Journalists often employ "human interest" stories to portray a sense victimization_ Because it could happen "to anyone, anytime," readers/viewers naturally associate and empathize with the subject of a human interest piece. Human interest stories are generally widely read and viewed, and their emotive impact on the reader/viewer is tremendous.

68. Since 2001, the Chronicle has run 94 victim-related stories, more than 6 times the number of victim-related stories in any of the other papers

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[41] At times, particularly in early- to mid-2002, the Atlanta Journal-Constitution ran stories describing briefly how the collapse of Enron affected the local Southern Gas Company. But, these stories contained none of the narrative "human interest" elements so prevalent in Houston.

(Arizona Republic 16, Rocky Mountain News 13, Denver Post 6, Atlanta Journal-Constitution 11).[42]

69. In that same timeframe, the Chronicle has run 133 stories about Enron layoffs, more than 6 times the number of stories about Enron layoffs in the Atlanta Journal-Constitution (22), and almost 15 times the number of stories about Enron layoffs in the Arizona Republic, Rocky Mountain News, and Denver Post, respectively (9, 7, and 6, respectively).[43]

70. In 2004 alone; 15 Chronicle articles have discussed "Enron" and "victim(s)" in the same story. The Atlanta Journal-Constitution, Denver Post, Rocky Mountain News, and Arizona Republic had no such articles.[44]

71. Emblematic of its focus on community victimization in its reporting was the Chronicle's multi-page layout entitled "The Faces of Enron." It showcased 9 separate ex-Enron employees and their families (who were pictured next to each article) and discussed in detail the impact Enron's bankruptcy had on their day-to-day lives. These profiles included: (a) a father of five facing "possible eviction," who "broke down when he said he had no money to buy his children Christmas gifts."; (b) a man who said he was "scared," "nervous," living "paycheck to paycheck," and "almost feels like he's failing his children."; (c) a woman whose home was destroyed by Tropical Storm Allison only months earlier, who was "hurt" and "angry," and whose friend, another employee was quoted as saying: "[i]t's

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[42] Armstrong Ex. 14.

[43] *Id.* Ex. 14.

[44] *Id.* Ex. 14.

like your husband has taken all your money and left you."; (d) a couple who met at Enron, and were planning to start a family, who lost $575,000 and felt "shocked" and "humiliate[ed]."; (e) a man whose "eyes watered" as he told his young daughter that he had lost his job.; (f) a family whose "day-to-day reality is that you're worried and scared."; and (g) a man forced to sell his car because he needed money, who felt "empty" because he has "nothing to do."; (h) a woman, fresh out of college, who felt "a little bit betrayed" and was "almost certain she will have to relocate."; and (i) and a man who felt "helpless," and asked "[H]ow do I explain that to my kids?"[45]

72. The fixation on the Enron-related human interest story persists in Houston. Just a few months ago -- more than twp years after Enron declared bankruptcy -- the *Houston Press* published "Children of Enron," which purports to tell the story of "Generation E," the children "whose lives were disrupted by the fall."[46] According to the cover of the newspaper, among "Ken Lay's many legacies" are a child who had to contribute to house payments, a

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[45] Marroso Ex. 184-190, 192 (*Houston Chronicle*). Furthermore, in stories not directly related to victims per se, the Houston media often quotes or refers to former Enron employees or stockholders and their financial loss. *Id.* Ex. 17 ("For Dorothy Ricketts, 46, a former business analyst at Enron who earned $70,000 a year, the testimony provided one more disturbing twist in what for her had been a 12,-year saga at Enron. Much of her retirement money was tied up in Enron stock. How much, she won't say. "It hurts too much to talk about it"); 291 ("I think of the poor people at Enron who not only lost their 401(k) but their pension and their jobs," Kemper *said*." "What a horrible thing that was.").

[46] The *Houston Press* is an alternative weekly paper that reaches 300,000 readers per week. Armstrong Ex. 21.

child who was forced to seek out therapy, and children who stopped eating or had to rely on food stamps and gas vouchers.

73. No surveyed media outside of Houston ran anything remotely like either "The Faces of Enron" or "Children of Enron."

74. *Judgmental Terminology*. Partnered with its overriding focus on victims of Enron's "fall" is the Houston news media's tendency to incorporate pejorative and negative words when reporting about former Enron executives, especially Lay and Skilling, and its willingness to characterize prosecution witnesses using favorable terminology. This occurs to a much greater degree in Houston than in the other venues.

75. Words like fraud, scandal, convict, sham, misrepresent, and bogus are used in connection with Enron generally and with these defendants specifically far more often by the Chronicle than its peer papers in Atlanta, Denver, and Phoenix. Many of the connections connote that a crime has occurred.[47]47

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[47] Marroso Exs. 293 ("The indictment says that while employees and investors lost their shirts, Skilling made more than $ 100 million in stock profits, salaries and bonuses. If he is convicted, you can forevermore say of any crooked corporate executive: 'He made a Skilling.'"); 294 ("MY HEART bleeds. I can't help it. It's just the way I am. When I see a guy who is down on his luck, I want to help him. Take Jeffrey Skilling. The poor guy is destitute. His lawyers say he can't pay the taxes on his $ 4.7 million home in River Oaks and his $ 500,000 condo in Dallas. Not to mention his dry cleaning, grocery bill and bar tab."); 295 ("IF I'M ANDY Fastow or Jeff Skilling or any other top Enron alumnus, I'm not sleeping as well as I was

76. Local papers other than the Chronicle, including the Houston Press, Texas Monthly, and Texas Observer, have identified Skilling and Lay, respectively, as the "Best Local Boy Gone Bad" and Houston's "Bum Steer."[48]

77. Houston television news shows also employ judgmental terminology, often emphasized through intonation and gesture. Attached as Exhibit 26 is an illustrative video of one (of many) such news segments entitled "DESPERATE MEASURES." In it, an animated reporter describes the "powerful" testimony of former Enron treasurer Ben Glisan, who was "so smart he sounded like an accounting professor."[49]

78. In many instances, the Chronicle ran stories that combined its human interest victimization focus with negative sentiments about Enron executives, particularly on their wealth, opulent homes, or seemingly excessive bonuses. For example:

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earlier this week. It's more than Scrooge-like horror of images of a former protégé paraded before cameras in shackles that disturbs my dreams. Former Enron Treasurer Ben Glisan Jr. isn't just an image. He's a danger. Prosecutors made a point of saying he's not cooperating. You'd think that would be comforting, given what one lawyer told my colleague, Mary Flood: 'When Glisan flips, this could be a bloodbath.'); 296 ("By allowing the company to meet its internal profit targets, the deal unleashed the payment of millions of dollars in bonuses and restricted stock to high-ranking executives, including Ken Lay, then the chief executive; and Jeffrey Skilling, then president, former executives said. 'This was absolutely a sham transaction, and it was an 11th-hour deal.").

[48] Marroso Ex. 29, 33, 77 (Best Local Boy Gone Bad; Bum Steer articles).

[49] Armstrong Ex. 26.

- The Chronicle ran a story entitled "11 at Enron getting a fourth of $55 million in bonus pool" that described the splitting of a bonus pool noting that "[m]any laid-off workers are angry about the retention bonuses."[50]
- Another article reported on how a 70-year old woman, who lost $175,000 on Enron stock was cheered and applauded at a Congressional hearing when she observed that "Where is no more work being done on" a $4 million house ex-CFO Andrew Fastow had been building in the wealthy River Oaks section of Houston.[51]

79. Media in Atlanta, Denver, and Phoenix were far less likely to juxtapose the plight of perceived victims with the wealth of Enron's former executives. For example, of the 18 stories where Skilling, Lay, Fastow, or Causey's name was associated with the upscale River Oaks neighborhood of Houston, virtually all -- 17 -- appear in the Chronicle. Of the approximately 143 televised news segments making the same connection, 142 are from television stations in Houston.[52]

80. *"Solving" The Puzzle of the Crooked E: All Pieces Leading To Lay and Skilling.* Since at least late 2002, the primary editorial theme and

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[50] Marroso Ex. 284 (*Houston Chronicle*).

[51] Marroso Ex. 286 (*Houston Chronicle*).

[52] Armstrong Ex. 14.

focus of the local news media, driven largely by the Chronicle, has been on the Enron criminal investigations and trials and furthering its goal of answering for its readers the question "Who are the criminals most responsible for the collapse of Enron?"

81. The Chronicle's answer to this question -- which, from the beginning, assumed that a crime had occurred and the responsible criminal at Enron must be identified -- is implicitly, and sometimes explicitly, that the people most criminally culpable are Enron's "big fish" Lay and Skilling.[53]

82. Below are examples of the Chronicle explicitly accusing Skilling, Lay, and Causey of criminal conduct:

- On July 9, 2004, the Chronicle ran a commentary on the front-page of its business section entitled, "What of Lay's claims? Answers lie in Valhalla." Accusing Lay of invoking the "doofus defense," the author concluded: "It will be for a judge and a jury to decide whether any of that constitutes a crime in a legal sense. Lay's lawyers are among the best in the country. When their smoke screen clears, they may have succeed in arguing Lay was not guilty by reason of ignorance. We all know better."[54]

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[53] Causey is implied to be guilty but not nearly as often described in terms that would indicate him to be "responsible" for the events. Marroso Ex. 222 (*Houston Chronicle*).

- Two days later, the Chronicle followed up on the "Valhalla" commentary with another about Enron's former chairman and CEO, this one entitled "Lay's World: All Fantasy, All the Time." The author noted that in Lay's "fantasy world ... corporate leaders can accept responsibility while deflecting blame. Top lieutenants are allowed to do side deals with the company, but the fact that they might enrich themselves is an outrage. [¶] In Lay's World, concerns about the company's shady financial deals are brushed aside. When concern becomes reality, responsibility is brushed aside."[55]
- In July 2004, the Chronicle ran a story about an allegedly incriminating document allegedly initialed by Richard Causey and convicted ex-CFO Andrew Fastow, the so-called "Global Galactic" agreement. The headline read: "Enron memo could be big problem for Causey; Handwritten note sets out secret deals he and Fastow made." The article included a

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[54] *Id.* Ex. 35 (*Houston Chronicle*).

[55] *Id.* Ex. 37 (*Houston Chronicle*).

graphic representation of the supposed agreement and quoted an anonymous defense lawyer as saying: “[It’s pretty damning. With this in hand you no longer have to guess about the deal, you don’t have to guess about the repurchase and you don’t have to guess whether there was a promise..... What was circumstantial evidence is now direct evidence.”[56]

- The day after Skilling testified before Congress, the Chronicle headline read: “‘It’s kind of hard to believe’ / Ex-Enron workers rip Skilling’s story.” The article critiqued Skilling’s testimony by quoting former Enron employees who watched it: “He is lying; he knew everything.. . . I am getting sicker by the minute.” “He’s knowledgeable. He’s twisting things around. He’s not answering things directly.” “I don’t understand how he could be in the position he was in, and say he didn’t know what was going on. It’s unbelievable.”[57] A companion piece quoted local attorneys: “I’m glad he’s not my client. What an idiot. He’s in

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[56] *Id.* Ex. 225 (*Houston Chronicle*). None of the four other papers surveyed has mentioned “Global Galactic” in any of its stories. *See* Armstrong Ex. 14.

[57] Marroso Ex. 17 (*Houston Chronicle*).

> denial." "It seems inconceivable that the Powers report, and what everyone else is saying, is wrong, and he is right." "It's not credible to say he knew he left this company in good financial shape. His story was such b.s."[58]

83. Because they use the prosecutors' road map to measure the progress of the Task Force and critique its progress, the Chronicle and the local television news media often appear to hold the same perspective. The Chronicle regularly echoes and quotes experts espousing the Task Force's strategic approach: force lower level Enron employee's to plead guilty and turn on Fastow; force Fastow to plead guilty; and bargain sentence leniency to induce Fastow to testify against Skilling and Lay. This tactic, described as "a classic pattern of trying to turn people down the food chain into informants who help them make cases against those further up,"[59] is designed to develop "star witnesses"[60] who ultimately will testify against the top executives.[61]

84. The Houston media's repeated explication of the prosecutors' efforts to bolster their case, coupled with its persistent insinuation of the defendants' guilt, creates an overall journalistic impression that the prosecutors have successfully woven together all the complicated transactions in

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[58] *Id.* Ex. 18 (*Houston Chronicle*).

[59] Marroso Ex. 220 (*Houston Chronicle*).

[60] Marroso Ex. 289 (*Houston Chronicle*).

[61] Attached as exhibit 22 is a compilation, in narrative form with citations to articles, describing the evolution of the Chronicle's coverage of the prosecution's strategy.

question into a comprehensive picture which will allow them to prove the defendants' guilt. This impression is reinforced by the Chronicle's deliberate use of the "Prosecution Scorecard," itself a powerful metaphor for an ever-forward marching prosecution, which strongly implies that it is only a matter of time before those listed on the card will be convicted or the prosecution will have failed. It is constantly emphasized that at the top of the list of those remaining are the most senior officials of Enron -- Skilling and Lay.

## F. The Coverage of Barges Trial

85. Media coverage of the recent Nigerian Barges trial vividly illustrates how reporting of Enron criminal matters in Houston differs from the other venues I examined.

### (i) Quantity of Coverage

86. Between September 19, 2004 and October 19, 2004 (30 days), the Chronicle ran 43 stories about the Barges trial. Of those, 3 stories ran on the front page of the paper and 10 others ran on the front page of the business section, demonstrating once again; that the editors of the Chronicle still consider Enron an important story to its readers. In stark contrast, the other four papers combined ran a total of 7 articles covering the Barges trial. Of those, four were mere brief paragraphs" in the "Daily Briefing" section of the Atlanta Journal-Constitution.[62]

87. The disparity in television coverage was even more dramatic. Compared with extensive

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[62] Armstrong Ex. 14.

coverage in the local Houston market over 150 separate news segments, many lengthy -- there were only nine television reports in the other venues combined, none extensive.[63]

88. In its effort to maximize the readers comprehensive view of every aspect of the Enron criminal prosecution, the Chronicle included in its reports evidence offered by the prosecution that the Court ruled to be inadmissible because of possible jury prejudice.[64]

### (ii) Quality of Coverage

89. The quality of coverage also differed between Houston and the other venues. Whereas reporting in the other venues either ignored the trial entirely (Arizona Republic), or covered it in glancing detail with no attempt to tie events to Skilling, Lay or Causey (Atlanta Journal-Constitution, Denver Post, Rocky Mountain News), the Chronicle continued its theme of "piecing together the Enron puzzle." References to Skilling and Lay, as well as to the effect the Barges trial would have on their upcoming trial were pervasive.[65] Repeatedly, the

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[63] Armstrong Ex. 20.

[64] *Id.* Ex. 236 (*Houston Chronicle*) ("When jurors hear closing arguments in the first Enron criminal trial today, they may also learn one of the accused bankers raked in $10 million the year he's accused of aiding Enron employees in a fraud.").

[65] *Id.* Ex. 292 (*Houston Chronicle*) ("Though the Justice Department's Enron Task Force obtained a successful conviction of Enron accounting firm Arthur Andersen for obstruction of justice in 2002, this case is the first to focus on a side deal like the ones that are the basis of the bigger cases against Enron's former chief executive officer, Jeff Skilling, and its former chairman, Ken Lay.").

local press provided its impression of the credibility witnesses and jury reactions[66] and characterized the transactions that were the subject of the trial -- from before the trial through to its reporting of the verdict -- in the same terms as the prosecution.[67]

90. As it has consistently done, the Chronicle's website reflected the paper's general coverage. As part of a Q&A section written by the reporter covering the trial and billed as "What do barges off the coast of Nigeria have to do with Enron and why this trial really mattered," the Chronicle answered by reinforcing the importance of the Barges trial for the prosecution of the Skilling:

> **Q. No top officials involved. Small change for Enron. Why did this matter?**
>
> A. This case was a small, digestible example of the same kind of allegations prosecutors are making in all the other Enron cases. It boils down to accusing Enron executives not just of stealing from the cookie jar but also of misleading the public about how much it really

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[66] Marroso Ex. 275 (describing prosecution witness Michael Kopper as "unflappable"); Marroso Ex. 16 (KPRC-TV newscast describing prosecution Ben Glisan as "so smart, he sounded like an accounting professor").

[67] Marroso Ex. 230 (before trial, describing the barge transaction as a "sham," just "one more cooking of the books in a very busy corporate kitchen"); Marroso Ex. 275 (after trial, commenting that a layman could detect illegality because it was "a crazy way to do business").

> had in its cookie jar. If a jury didn't care about this, it might not care about the bigger cases to come, including the case of ex-CEO Jeff Skilling, who's also accused in the barge deal....
>
> **Q. Where were Enron's bigwigs in this trial?**
>
> A. Ex-Chief Financial Officer Andrew Fastow, who pleaded guilty to two conspiracy charges and is cooperating with the government, is central to the barge deal but was not put on the stand, it's thought prosecutors are holding him in reserve for Skilling's trial.... http://www.chron.com/cs/CDA/ssistory.mpl/special/enron/2605829#matters

91. The Chronicle's coverage raised this point again as the verdict was announced. In an editorial entitled, "Jury agrees company executive and bankers engaged in a criminal enterprise. Did the top people know?" the Chronicle commented that "[t]he jury, which acquitted a former Enron accountant who testified she did not know about the improper element of the barge deal, found the evidence convincing. That is bad news for former Enron Chairman Ken Lay and former CEO Jeff Skilling, whose trial is coming up. The two are left with the defense that, although they were lavishly

paid corporate chieftains, they didn't know what was going on at work and take no responsibility for it."[68]

## IV.
## CONCLUSION

92. In conclusion, the local Houston news media have tried to provide the extensive information necessary to explain to the Houston community what happened at Enron and who is responsible for it. They have supported the full range of community institutions perceived to have been damaged by Enron's collapse. And they have tried to keep the community informed about the federal prosecutors' progress in moving toward the convictions "necessary" to bring closure to the Enron problem. The local Houston news media's coverage has been so pervasive and emphatic and has been so carefully styled to be authoritative that it has projected and reflected a consistent expectation to the entire Houston community: the evidence has been gathered, lower level officials have admitted their guilt, pled guilty and agreed to testify against the top Enron executives -- Skilling and Lay -- who will likely be convicted, thus finally solving the puzzle and putting the matter of criminality to rest.

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[68] Marroso Ex. 255 (*Houston Chronicle*). Reporting a detail and connection no other media approached, the Chronicle even tied the Barges verdict to these defendants' motion to transfer venue, a motion that had not yet been filed. Citing Jacob Frenkel, "a former federal prosecutor in the Washington D.C.-area," the Chronicle suggested that Kahanek's "acquittal will impede other defendants in the claim that excessive publicity has tainted the Houston jury pool against all-Enron related defendants."

93. As I observed in the Oklahoma City Bombing case, once the local news media create and project such a comprehensive and seamless picture or "superstructure" to explain the case to their readers and viewers, as the Houston media have done here, the members of the community -- including the prospective jurors in this criminal trial -- will understand the community's expectation that the trial should conclude with the conviction of the defendants and that they will be obliged to answer to that community by doing their part in fulfilling the outcome. Details consistent with the picture constructed are viewed as presumptive facts. Inconsistent details are either explained away or rejected as untrue -- such as those tending to exonerate senior executives and leave culpability uncertain. While this "superstructure" is palpable in Houston, it is essentially non-existent in the other venues I studied.

I declare under penalty of perjury that the foregoing-is true and correct. Executed on November 11, 2004 in Washington, D.C.

s/R. Scott Armstrong

Scott Armstrong

## APPENDIX F

## DECLARATION OF EDWARD BRONSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF )
AMERICA, )
Plaintiff, )
v. )
JEFFREY K. )
SKILLING ) Crim. No. H-04-25
and RICHARD A. ) (Lake, J.)
CAUSEY, and )
KENNETH )
LAY, )
Defendants )

## **DECLARATION OF EDWARD BRONSON, PH.D IN SUPPORT OF DEFENDANT JEFFREY SKILLING'S MOTION TO TRANSFER VENUE**

I, Edward J. Bronson, declare as follows:

1. I am a Professor Emeritus of Political Science at California State University, Chico.

2. I submit this declaration in support of defendant Jeffrey Skilling's motion to transfer venue. I have been asked to address the comparative levels of prejudicial pretrial publicity in the venires of Houston, Atlanta, Denver, and Phoenix and to assess the effect that pretrial publicity may have on the predispositions of jury-eligible members in those places.

3. This declaration will be divided into seven sections, as follows:

I. Qualifications

II. The Standards for Analysis

III. Pretrial Publicity

IV. Survey

V. Size and Nature of the Community

VI. Voir Dire

VII. Conclusion.

## I. Qualifications

4. Education, Employment, Research, and Testifying. I will begin by briefly reviewing my qualifications, and I have attached a curriculum vitae as exhibit 1.

5. After my undergraduate education, I received a J.D. from the University of Denver; an L.L.M. from New York University; and a Ph.D. in Political Science, emphasizing Public Law, from the University of Colorado. As part of the study for my doctorate, I received training in various types of social scientific analysis.

6. I have been employed since 1969 at California State University, Chico, where I have been a Professor of Political Science in the College of Behavioral and Social Sciences, now emeritus. I have taught courses in Administration of Justice, Legal Analysis, and Constitutional Law. In addition, I have taught at the University of Colorado as a Visiting Professor, and in summer programs at several law schools, including the University of San Francisco; the University of Santa Clara; the University of California at Hastings, Berkeley, and Los Angeles; the University of San Diego; California Western; and the University of Puget Sound (now Seattle). I have been a Visiting Scholar at the University of Alaska and at the College of Micronesia, and in 1992 I was a Fulbright Scholar at the Center for Judiciary Studies, Ministry of Justice, in Lisbon, Portugal, where judges and public prosecutors are trained.

7. In my research, dating back to 1968, I have studied the attitudes of jurors toward relevant issues of criminal justice, the effects of those attitudes on verdicts, and the way that various processes, including publicity and voir dire, affect jury behavior. I have done research and published articles about these subjects, a number of which are set forth in the accompanying curriculum vitae.

8. In addition, I have acted as a consultant on ways to improve the fairness of voir dire and jury selection. I have testified and submitted pretrial and posttrial affidavits on these matters in many cases, have reviewed transcripts of voir dire as part of the preparation for drafting affidavits submitted for post-conviction relief and to testify on the efficacy of voir dire, and have lectured on voir dire and jury selection issues at various academic and professional organizations.

9. Venue Related Qualifications. I have been studying and doing research on pretrial publicity for almost 35 years. I have published and presented research papers at various academic and professional meetings; authored the chapters on venue and pretrial publicity in California Criminal Law Procedure & Practice, now in press for the eighth edition, published under the auspices of the University of California and the State Bar of California, and widely used by lawyers and judges; done pretrial and post-conviction publicity analysis work for attorneys involved in hundreds of cases; made recommendations about the need for a change of venue or other remedy in many cases; developed, conducted, and evaluated surveys to measure the extent and nature of pretrial publicity;

qualified and testified as an expert witness on change-of-venue motions in more than 100 cases, testifying in person 96 times (including two cases in Texas, one motion denied, the other granted) and 13 times by affidavit; submitted several additional affidavits in post-conviction proceedings where the issue involved possible prejudicial pretrial publicity; and testified several times on the need to close various hearings (preliminary, competency, and venue) in high-profile cases.

10. Either as expert or consultant, I have recommended *against* a change of venue in 134 cases (11 times in testimony) and *in favor* of a change of venue 100 times.

11. I have testified or consulted on the venue issue in such well-known cases as *United States v. McVeigh* (the Oklahoma City bombing); *Oklahoma v. Nichols* (the state's recent prosecution for the bombing); *People v. Richard Allen Davis* (the Polly Klaas case); *United States v. Kaczynski* (the Unabomber case); the San Francisco dog mauling case; the John Walker Lindh case (the American Taliban); the case of one of the men charged with the African embassy bombings; the Orange County, California bankruptcy proceedings; *United States v. Cary Stayner* (the Yosemite Park murder case); lawsuits arising from the UAW-Caterpillar Tractor strike in Peoria, Illinois; and other well-known cases, many in federal courts around the country. In some of those cases, such as the Unabomber and the American Taliban, I recommended against the need for a change of venue, despite the very high profile of those cases.

12. Content Analysis Qualifications. I have qualified many times as an expert in state and federal courts throughout the country on the content analysis of pretrial publicity. Content analysis is a technique used in social science and other areas to provide a scientific means of analyzing diverse material. I have done research in this area and presented professional papers. I have also often analyzed and testified about content analysis of other areas, particularly such matters as open-ended responses on survey questionnaires and in voir dire.

13. Survey Analysis Qualifications. I have qualified frequently as an expert on the proper means of conducting and critiquing public opinion surveys. I have training and extensive experience in this area and have conducted research and presented professional papers in the field. I am a member of the American Association of Public Opinion Research and have spoken at national meetings of this and other professional groups. I was a member of a four-person group that was commissioned to write standards for venue surveys, which have subsequently been published after being adopted by the American Society of Trial Consultants.

14. Jury Voir Dire Qualifications. I have done substantial research on voir dire procedures, published in this area, lectured on the topic at professional meetings for lawyers and social scientists, taught California Continuing Education of the Bar classes on the topic, and testified many times as an expert witness on the topic—both as a possible remedy for prejudicial pretrial publicity and as to its effectiveness

in a particular case—in pretrial and in post-conviction legal contexts.

## II. The Standards for My Analysis

15. The Social Science Standard. Throughout this declaration, I employ recognized social science techniques to assess the extent and impact of prejudicial pretrial publicity on the venires of Houston, Atlanta, Denver, and Phoenix. These techniques and standards are a product of a substantial body of research on the topic, many of which are cited below, as well as my personal research and observations of pretrial publicity in connection with more than 100 cases involving motions to transfer venue.

16. In a recent review of the social science research on pretrial publicity (PTP) on jurors' consideration of evidence and their ultimate decisions, the authors conducted a meta-analysis of 44 empirical studies, representing 5,755 subjects, conducted by dozens of scholars using a variety of methodologies over the course of 30 years. These researchers concluded that, "Subjects exposed to negative PTP were significantly more likely to judge the defendant guilty compared to subjects exposed to less or no PTP."[1] The prejudicial impact was found at all three stages: pretrial; posttrial, but prior to deliberations; and postdeliberation.

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[1] N. Steblay, et al., "The Effects of Pretrial Publicity on Juror Verdicts: A Meta-Analytical Review," 23 *Law & Human Behavior* 219 (1999).

17. Pretrial publicity leads to the development of a "story model."[2] Individuals exposed to substantial PTP focus not only on isolated fragments of information, but also form a belief framework about the defendant's guilt and/or character. Those exposed to PTP construct a story to make "sense" out of a particular event. Once that belief is formed, it is very difficult to dislodge. New information that is consistent with the story is readily absorbed, while inconsistent information tends to be rejected.

18. The story of the case thus becomes a prism through which trial evidence and legal theories are viewed at trial. If the prospective jurors' story model leads them to believe the defendant is guilty, then the credibility of prosecution witnesses is enhanced, and explanations or other defenses do not ring true. Research confirms that people exposed to substantial amounts of PTP are more likely than people exposed to lesser levels of PTP to form story models.[3]

## III. Pretrial Publicity

19. In this case, primary responsibility for the analysis of the pretrial publicity was undertaken by Scott Armstrong. I am familiar with Mr. Armstrong's work as a reporter, as an author, and as an expert in the field of content analysis of pretrial publicity. I can say without reservation that Mr. Armstrong is a premier expert, perhaps *the* premier expert, in this

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[2] *Id.*

[3] *Id.*

country on the topic of the content analysis of pretrial publicity.

20. My primary focus will be on the analysis of the community survey done in this case. Surveys have meaning only to the extent they reflect the content of the media coverage of the case and test for the impact of that coverage on the community. Therefore, while I have reviewed some of the coverage of this case, I rely heavily on Mr. Armstrong's analysis, particularly on his insights into the comparison between Houston, Atlanta, Denver, and Phoenix.

21. In venue cases with national pretrial publicity like this one, it is important to focus not only on the pretrial publicity in the initial venue (here, Houston), but also to make a comparative analysis of the pretrial publicity present in alternate venues to ensure that a change of venue would result in a less biased jury pool. For example, in the Unabomber case and in the American Taliban case (both federal cases), I recommended against a change of venue, not because there was insufficient pretrial publicity and prejudice in the respective initial venues, but because the pretrial publicity and prejudice in other jurisdictions were only marginally lower. On the other hand, in a third federal case, the Oklahoma City Bombing, I recommended a change of venue (which was ultimately granted) even though there was substantial pretrial publicity and prejudice elsewhere because the tone, breadth, and depth of coverage in Oklahoma City were markedly greater than in other venues, such as Denver. This case falls into the Oklahoma City Bombing category: while Enron was and, to some extent, remains a story of national interest, the tone,

breadth, and depth of coverage in Houston is markedly greater than the coverage in three other comparable venues, Atlanta, Denver, and Phoenix.

22. Quantitative Analysis. Between December 2, 2001 and mid-October 2004, when I was asked to write this declaration, there were more than 5,000 articles in the Houston Chronicle that mentioned the word "Enron." Excluding any references simply to "Enron Field," the number of articles is reduced by about 13%, to approximately 4,400.

23. In sharp contrast, the major newspapers in Atlanta, Phoenix, and Denver had far fewer stories with the word "Enron" (excluding references solely to "Enron Field") during the same time period:

- approximately 625 in the Arizona Republic, the dominant newspaper in Phoenix;
- approximately 800 in the Rocky Mountain News and 700 in the Denver Post, the two major papers in Denver (of course, most readers would be exposed to only one paper or the other, but not both); and
- almost 1,300 in the Atlanta Journal-Constitution, the principal paper in Atlanta.

24. Thus, there were between 7 and 3.5 times as many articles in the Houston venue as in the other venues (assuming that potential jurors in Denver are mostly reading one but not both papers there). Obviously, there is an enormous disparity between

Houston and the other venues, both absolutely and comparatively.

25. In the 107 trial court cases in which I have testified (excluding two others, in one of which the articles were not the basis for the venue hearing, and another where I had only a small sample of the coverage), the median number of articles concerning the trial in the initial venue's dominant paper was 88. Almost half of those motions were granted by either the state or federal trial judge.

26. This case, with approximately 4,400 articles between January 1, 2002 and October 15, 2004, ranks number *two* of all cases in which I have testified. In the 11 white collar criminal and civil venue cases in which I have testified, none had more than 5% of the newspaper articles about Enron run by the Chronicle. The only case on which I have worked that had more pretrial publicity was the 2003 state trial of Terry Nichols, a capital murder case with news coverage that spanned not only an eight-year period (more than twice the time frame here), but also included several papers throughout the state (as opposed to only the Houston Chronicle here).

27. In 2004 alone, there have been more than more than 500 articles in the Houston Chronicle mentioning the word "Enron" (again excluding all "Enron Field" references). That number of articles by itself would put this case at number *seven* of the 107 in which I have testified.

28. During the same time period, the four principal papers in the other three venues *combined*

published only about *half* that many articles mentioning "Enron" (approximately 100 in the Atlanta Journal-Constitution, 65 in the Rocky Mountain News, 55 in the Denver Post 55, and 40 in the Arizona Republic).

29. One reason for the great disparity of coverage between the venues is that the Houston paper was, in effect, covering two stories. The first one was the national story of accounting fraud, misrepresentation, the fallibility of regulatory bodies, and so much else that was being covered throughout the country, though less comprehensively than in Houston. The second story, however, was covered primarily in Houston only. This was the local story, focusing on the impact of the Enron collapse on the residents of the local community and the community itself. In large part, this was the human interest story, conveying the pathos endured by fellow citizens in Houston. This was the story of loss of jobs, the loss of savings and pensions, family stress and its aftermath, the damage to other businesses and jobholders, the loss of a community icon and its benefits, and a host of other related matters. Thus, the people of Houston were exposed to a very different media coverage and to a different reality than were those elsewhere. These are significant factors that will make it difficult for the defendants to receive a fair trial in Houston.

30. As might be expected, the greater the number of articles concerning a topic of trial, the more likely the trial judges in the cases in which I have testified were to grant a change of venue. In cases involving 200 or more articles, trial judges granted a change of venue 59% of the time. In 2004 alone, the

Houston Chronicle has run more than twice that number of stories, and since December 2, 2001, has run *22* times that number.

31. The thousands of Enron references in the Houston Chronicle demonstrate the extent to which Enron—as an institution, employer, actor in and supporter of the local economy, and a pride-generating symbol of Houston's success—had become an integral part of the Houston venue community. Its collapse and shame were not only economic but psychological disasters. The same is not true for the other venues studied. The dominant papers in Atlanta, Denver, and Phoenix, to the extent they even covered the "Enron story," largely portray it as a Houston problem.

32. Rightly or wrongly, the Houston Chronicle has focused and cast blame largely on Mr. Skilling and his co-defendants. For example, Mr. Skilling's name appeared in a headline more than 50 times in the Houston Chronicle, compared to just twice in the Arizona Republic and once each in the Denver Post, Rocky Mountain News, and Atlanta Journal-Constitution. Mr. Skilling's name appeared in the body of about 500 Houston Chronicle articles, compared to just over 100 articles in the other four newspapers combined. A similar pattern was true for co-defendant Kenneth Lay.

33. While the alleged crimes of Mr. Skilling and his co-defendants are seen as distant and abstract problems in Atlanta, Denver, and Phoenix, they are local and personal to members of the Houston venire. The media coverage is both cause and effect of these feelings.

34. Salience. Pretrial prejudice in high-profile cases varies depending on feelings about the incident's closeness to home (in physical proximity but often primarily in the psychological sense) and how the crime resonated in the personal lives of local people and their community. In pretrial publicity analyses, this phenomenon is known as "salience."[4]

35. Cases are salient when they seem especially relevant to our lives. Salience may arise because of propinquity—it could happen to me, it happened near me or in a place I know or have been, it affects me, people like me are involved, and other similar factors. Salience adds to our interest in the case, our personal and emotional involvement, our knowledge, and our retention.

36. Two well-known cases illustrate the concept. While everyone knew about the Oklahoma City bombing, it had special salience to the people of Oklahoma City. They lived through it, identified with the local victims, and were suffused with coverage. The salience in Oklahoma City was, in large part, why I recommended a change of venue in that case, but recommended against such a change in another notorious case, that of the Unabomber. Most residents

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[4] E. Bronson and R. Ross, *Gender and Salience As Factors in Jury Pool Bias: A Preliminary Investigation*, California State University, Chico, Discussion Paper Series 1999 (presented at the Southwestern Political Science Association, San Antonio 1999); and E. Bronson and R. Ross, *Justice in the Era of the High-Profile Defendant: Will a Change of Venue Help?* California State University, Chico, Discussion Paper Series 1991 (presented at national meeting, American Political Science Association, Washington, D.C. 1991).

probably knew about the Unabomber case in Sacramento where two of the murders occurred, but there was no sufficiently special salience to the case among those who lived in Sacramento as compared with other areas.

37. Enron was an instance of high salience to Houston. The number of alleged victims, the impact on the community, and many other factors make it a brooding omnipresence in the Houston area.

38. In 2004 alone, the Houston Chronicle has run an article on the front page with the word "Enron" 57 times. Front-page placement not only means that members of the jury venire were more likely to read the article, but also that the editors of the Houston Chronicle believe Enron is of special interest to its readers. That the four other papers surveyed ran a *combined* total of seven front page articles about Enron in 2004 demonstrates that those editors have made the judgment that their readers' interest in Enron has receded to a minimal level. The Houston Chornicle also maintains a unique and extensive website, updated daily, that records and preserves even the most minute details of Enron-related events. The website again confirms the Chronicle's conclusion that Enron is of special interest to its readers.

39. One might argue that what happened in the Enron case is equally abhorrent in any venue to which this trial might be moved. This very contention is often made in cases where there is an especially reprehensible crime—the murder of a police officer, for example. While jurors in any venue would be upset about the killing of a police officer, there is a crucial

difference between its impact on jurors who would hear the case in the place where the police officer worked and on those elsewhere. As a thoughtful prosecutor once remarked to me about a specific "cop killing" case, after noting the anger everywhere: "Yes, but here it's *our* cop." In this case, the citizens of the Houston area, having experienced the anger, shock, and pain surrounding this case—many personally and others vicariously through the media—feel "it was *our* community." That is not so elsewhere.

40. As a special matter, I note my concern that the nature of the media coverage of this event, coupled with the way it has affected the entire Houston community, will create an unusual amount of pressure on local jurors, perhaps consciously, perhaps not, to return a verdict of guilty lest they incur the wrath or displeasure of their friends, neighbors, and co-workers.

41. The pressure to convict may be increased by another factor, often mentioned by the government and widely reported in the Houston media: if Mr. Skilling and his co-defendants are convicted, their wealth will be taken from them and donated to a fund for those who suffered as a result of the Enron collapse. Prospective jurors aware of this may well feel additional pressure to convict because of that concern for their fellow citizens who may benefit from the fund. In a sense, this victims fund represents a type of payment to the Houston area not dissimilar from the situation where a government is suing an outsider for damages. It reflects a "we" versus "them" situation. In the Houston venue, Mr. Skilling and his co-defendants are viewed as the "them."

42. It has been suggested by the government in response to other Enron-related motions to transfer venue that an anonymous jury would insulate jurors from the potential pressures to convict. In my opinion, anonymity is an insufficient remedy for two reasons. First, juror anonymity is typically reserved for cases, such as criminal trials of gang members, where it is believed that jurors may be intimidated into *acquitting* the defendant because they fear physical violence from his cohorts. Here, in contrast, the pressure will be to *convict* the perceived guilty ex-Enron executives. Second, to assume that jurors in a long and open trial attended by the public, interested parties, and the media will have their identities kept secret and—more important—*believe* their identities will be protected, is not realistic. I note the incident at the recent Tyco trial in which a juror's (anonymous) name made the front pages of the national press.

## IV. The Survey

43. At the request of Mr. Skilling's counsel, I reviewed the survey conducted by DecisionQuest (DQ) to assess and opine on whether it meets recognized standards of survey research. I had no part in the design or implementation of DQ's survey. As explained below, based on my training and experience in the field of public opinion testing, it is my opinion that DQ's survey meets the highest standards of survey research, measured by a whole range of criteria. The methodology is well beyond what is required to demonstrate results that are both reliable and valid.

44. The firm in charge of the survey, as noted, was the prominent and respected jury consulting firm

of DecisionQuest. The calls were made from the Bernett Research call center in Pocatello, Idaho from October 7 to October 8, 2004. Bernett Research is a large firm that is a member of CASRO (Council of American Survey Research Organizations). All members of CASRO are required to follow its Code of Standards and Ethics for Survey Research, requiring the highest standards for conducting surveys, and embodying the same procedures adopted by AAPOR (American Society for Public Opinion Research), of which I am a long-time member. Robert F. Bettler, Ph.D, a DQ senior research analyst who specializes in statistical analysis, reviewed all training and operations manuals, interviewed managers, supervisors, and programmers regarding methodological issues, and personally monitored hours of calling.

45. Methodology. There are several factors to consider in a representative random community survey. Each factor and its application in this survey are discussed below.

46. Factor #1: Confidence Interval, Confidence Level, and Sample Size. The "confidence interval" is the plus-or-minus figure usually reported in newspaper or television opinion poll results. For example, if you use a confidence interval of 4, and 47% percent of your sample picks an answer, you can be "sure" that if you had asked the question of the entire relevant population, then between 43% (47 – 4) and 51% (47 + 4) would have picked that answer.

47. The "confidence level" tells you how sure you can be. It is expressed as a percentage and

represents how often the true percentage of the population who would pick an answer lies within the confidence interval. The 95% confidence level means you can be 95% certain. Most survey researchers use the 95% confidence level.

48. When you put the confidence level and the confidence interval together, you can say, in the example set forth above, that you are 95% sure that the true percentage of the population is between 43% and 51%.

49. How confident and accurate you can be depends on the "sample size." Most venue surveys interview 300-400 respondents, but in this case the sample sizes were approximately twice that size, ranging from 773 in Houston to 805 in Atlanta. As set forth in the table below, the greater the sample size, the higher the confidence interval at a confidence level of 95%:

| Sample Size | Confidence Interval |
|---|---|
| 300 | 5.66% |
| 400 | 4.9% |
| 500 | 4.38 |
| 600 | 4.0% |
| 700 | 3.7% |
| 800 | 3.46% |

50. Thus, the sample sizes used in this survey of approximately 800 were more than twice the standard venue survey sample size, generating an unusually accurate confidence level of + 3.46.

51. Factor #2: Random Digit Dialing (RDD) and Proper Sample. Random digit dialing is the standard survey technique to give everyone in the universe being sampled (jury-eligible residents of the judicial division) an equal chance of being interviewed. RDD starts with a valid area code and exchange, or prefix, and then generates sets of completely random numbers for the four digits.[5] Lists of these numbers, screened to exclude government, business, and non-working blocks, may be purchased from national companies that do this work. The proper sample means that in this survey only those who met the standards for the jury pool were interviewed in each of the venue pools (registered voters who are residents of the proper judicial district). Calls were made between approximately 10 a.m. and 9 p.m. in the respondent's area. I note that the gender breakdown matches census data, indicating that sophisticated techniques were utilized and a proper representative sample was being obtained. Other standard survey methods were appropriately followed as well.

52. Factor #3: Callbacks. This is a technique to assure as much as possible that respondents who are difficult to reach are in fact interviewed, making the sample as representative as possible. Here, there were

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[5] Approximately 95% of U.S. households have a telephone.

four attempts to reach people, a generally accepted number of callbacks.

53. Factor #4: General and Survey-Specific Training. Interviewers received general training on interviewing plus additional training on possible difficulties with the particular survey. In addition, there was a pretesting procedure for the survey instrument. For quality control and additional training, supervisors monitored approximately 10% of all actual calls.

54. Factor #5: Survey Format. This was an unusually straightforward, short, and simple survey. The questions were few and simple, so there was no confusion, order effects, demand characteristics, or other problems that often accompany surveys. Neither Bernett Research nor the callers were told the purpose of the survey, so that callers would not influence respondents, even unconsciously.

55. Summary of Survey. There are a variety of other standard procedures beyond those few listed above that skilled professional survey researchers utilize. It is clear to me that the survey conducted here is not merely a proper one, but an exemplary one.

56. Survey Results. As explained in greater detail below, based on my research in this area and my experience in over 100 cases where motions to transfer venue have been at issue, it is my opinion that there are dangerous levels of prejudice in the Houston venue and that the level of prejudice in the Houston venue is significantly higher than the levels seen in the Atlanta, Denver, and Phoenix venues.

57. Question 4. "The executives of Enron corporation have been accused of mismanaging the company. The executives now face criminal charges and will be brought to trial. Please name all of the former executives of Enron who you believe are guilty of crimes."

**Number Mentioning Skilling As Guilty**

| Venue | Number |
|---|---|
| Houston | 95 |
| Phoenix | 11 |
| Denver | 21 |
| Atlanta | 21 |

58. This was an open-ended question, showing substantial disparities between those who recalled Mr. Skilling's name and who believe he is guilty in Houston—about 12.3%— compared with only about one-fourth that many in the other venues—under 3% overall.

59. It should be understood that this was not a standard prejudgment question in which you tell respondents who the defendant is and what he is charged with. Given the number of people and other firms who have been charged in the Enron affair, this absolute number of those who said, based on recall rather than recognition (without being given his name), that Mr. Skilling is guilty is substantial; even more powerful is the fact that four times as many

respondents gave his name in Houston compared with the other areas.[6] Of course, there is no doubt that if respondents had been told that Mr. Skilling had been charged with certain crimes in the case, and then asked if they believed he was guilty (a recognition question), the number saying he was guilty would have been much, much higher.

60. Question 5. "What words come to mind when you hear the name, Jeff Skilling?" The standard technique to assess the open-ended responses to such a question is content analysis. Content analysis is a research analytical tool devised to analyze massive amounts of material in a manner that is objective, neutral, and systematic.[7] It is widely used in the social sciences to interpret open-ended comments in public opinion surveys.

61. On average, Houston respondents uttered between 1.42 and 1.61 times the number of words as respondents from Atlanta, Denver, and Phoenix (H = 15.3 words/respondent, A = 10.7, D = 9.7, P = 9.5), thus showing a deeper knowledge and case involvement on the part of Houstonians.

62. Even though there were slightly more respondents in Atlanta, Denver, and Phoenix than in Houston, there were 538 "prejudicial" or "negative" words uttered by Houston respondents, compared to 201 in Atlanta, 196 in Denver, and 156 in Phoenix. On

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[6] Almost twice as many respondents in Houston as in the other venues also named other allegedly guilty Enron executives, an indication of the greater depth and breadth of knowledge among Houston residents about Enron.

[7] *See generally* R. Weber, *Basic Content Analysis* (1985).

a "prejudicial" word per respondent basis, Houston area residents were 2.8 times more likely than Atlanta and Denver respondents and 3.5 times more likely than Phoenix respondents to make a prejudicial statement.

63. Similarly, there were far more "anger" or "angry" words, as defined by the software designed by Pennebaker and Francis, uttered in Houston than anywhere else (in fact more than the other three venues combined): 97 in Houston; 29 in Denver; 21 in Atlanta; and 17 in Phoenix. On an "angry" word per respondent basis, Houstonians were 3.25 times more likely than Denver respondents, 4.3 times more likely than Atlanta respondents, and 6.5 times more likely than Phoenix respondents to utter a prejudicial statement in response to the question asking what words came to mind about Mr. Skilling.

64. Much more frequently than in any other site surveyed, Houston respondents also used more emotionally charged terms in reference to Mr. Skilling like asshole, axe murderer, backstabber, bastard, devil, dirty, evil, murderer, pig, rotten, screwed his employees, scumbag, should be hanged, sleazebag, slimebag, slimy rat, snake, terrible, terrorist, weasel, and dozens of others. As explained in more detail below, because of the societal pressures present in the courtroom, it is unlikely that these sorts of words, seen frequently in Decision Quest's anonymous telephone survey, will be said during voir dire.

65. As illustrated by the list below, several Houston respondents indicated that they had been directly affected by the collapse or had friends who had

been, even though this was not responsive to the question asked, while not a single respondent from the other venues noted any such connection:

- "I have a friend who is single and she lost half her retirement at the age of 64 because of Enron. A lot of people lost so much and he had a lot to do with it."

- "The word crook comes to my mind. What I mean by that is that I have a lot of friends that lost everything because of what happened at Enron."

- "Jeff Skilling is guilty. My company went bankrupt because of its connection with Enron."

- "Enron mess. I want my 10,000 dollars back. Enron would help the women and children's charities in my community. The main people were not honest and could not keep those charities open. Enron promised these charities money but never gave it to them. They were not very good stewards of the company. I owned 10,000 dollars in Enron stock and it was for retirement. In about a

> week it was reduced to pennies
> on the dollar after the incident."

66. These measures reveal the much greater breadth, negativity, and anger of the Houston respondents toward Mr. Skilling than by respondents in any of the other venues. These are the very kind of knowledge and feelings that are most prejudicial and most difficult to identify during voir dire.[8]

67. Question 6. "Do you personally know anyone who has been harmed by what happened to Enron?"

**Know Someone Harmed by Enron Collapse**

| **Venue** | **Number** |
|---|---|
| Houston | 254 |
| Phoenix | 94 |
| Denver | 94 |
| Atlanta | 128 |

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[8] *See* E. Bronson, *The Effectiveness of Voir Dire in Discovering Prejudice in High-Publicity Cases: An Archival Study of the Minimization Effect*, California State University, Chico, Discussion Paper Series 1989 (also published as *The Effectiveness of Voir Dire in Discovering Prejudice in High Publicity Cases: A Case Study of the Minimization Effect* in 20th Anniversary Celebration Seminar, California Attorneys for Criminal Justice 1993, presented as *Does Prejudicial Pretrial Publicity Affect Jurors?* at national meeting, Law and Society Association, Madison 1989).

68. Houston residents were much more likely to respond that they personally knew someone harmed by what happened to Enron, with 32.9% in Houston knowing someone harmed, compared with just 11.8% in Phoenix, 12.0% in Denver, and 15.9% in Atlanta. *See also* ¶ 65, *supra*. Thus, over twice as many people in Houston know such a person as in Atlanta, and almost three times as many as in Phoenix and Denver. This is another example of the painful salience of the case to the Houston jury pool.

69. Question 7. "In your opinion, was the economy of the (respondent offered the appropriate site -- Houston, Phoenix, Denver, or Atlanta) -- area more affected by the collapse of Enron than other cities in the United States?"

**Number Saying Their Area Most Affected**

| Venue | Number |
|---|---|
| Houston | 539 |
| Phoenix | 87 |
| Denver | 75 |
| Atlanta | 96 |

70. These numbers show an extremely significant difference between Houston and the other three cities on a crucial and revealing response. While over two-thirds (69.7%) of Houston venue respondents agreed their area was hit the hardest by the collapse of

Enron, a range of from just 7.5% to 11.9% of respondents in Phoenix, Denver and Atlanta expressed the same feelings about their own locale—only about one-seventh as many as in Houston. This is more evidence of the much greater painful salience of the case to Houston people.

## V. The Size and Nature of the Community

71. The population of the 13-county area from which the jury pool for this case would be selected is 4,637,853; just over three-fourths of this population lives in Harris County. This obviously is not a small county or venue.

72. It has been suggested by the government in response to other Enron-related motions to transfer venue that a change of venue is unnecessary because with more than 4 million Houston venue residents, there exist at least 12 unbiased prospective jurors. This is an issue about which I have written and done substantial research.[9]

73. Putting aside the fact that the government's argument would, by itself, preclude a motion to transfer venue from *any* metropolitan venue, the argument is based on four premises that do not exist, or exist to a significantly lesser degree, in a case like this one. The criminal trial of Mr. Skilling and his

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[9] *Size of the Community As a Factor in Change of Venue: When a Large Community Becomes Small for Purposes of Venue.* California State University, Chico Discussion Paper Series, 1999. Also published in 2000 Capital Case Defense Seminar Syllabus L.A.: California Attorneys for Criminal Justice and California Public Defenders Association.

co-defendants is one of those cases where a change of venue is necessary despite the large population of the initial venue.

74. Ability to Pick a Jury. The first reason why a change of venue tends to be less necessary where the initial venue has a large population is the seemingly common-sense notion that the larger the community, the better the chance, at least theoretically, of obtaining a venire that is untainted by pretrial publicity or other prejudice.

75. This analysis, however, assumes that voir dire is sufficient to identify and exclude those who may be unfair, a point I do not accept and will discuss later. Perhaps more importantly, even if voir dire could effectively identify and exclude those members of the Houston venue who have been tainted by prejudicial pretrial publicity, because of the significant number of predisposed Houston venue jurors (at least one in three according to DQ's survey) the remaining jury pool would no longer be representative of the Houston community at large (even before taking into account other factors such as jurors who claim a hardship). Moreover, when pretrial publicity has infiltrated a community so pervasively that arriving at an unbiased jury requires the dismissal of such a broad segment of the venire as would be required in this case, there is a real danger that the presumably unbiased jury will feel intense pressure to convict in order to appease the community.

76. Communications Network. A second reason that size of the community is important relates to the network of communications through which

residents learn about a case and make judgments about it. Word travels more quickly in a smaller community. The communication is informal—gossip over the back fence, rumors, coffee shop interchanges—rather than formal, that is, through the media. Additionally, a larger percentage of venirepersons know people with some stake in the case. That is particularly dangerous when the version of the facts has a patina of credibility because it is derived from a friend or neighbor who "knows" what really happened in a case, such as hearing someone say that they (or someone they know) worked at Enron and a particular defendant "must" have known about certain things.

77. Although Houston is a large venue, Enron was a staple of the community. As discussed elsewhere in this report, Enron's rise and fall has special salience in the Houston venue. As a result, people communicate about Enron in precisely the same informal, person-to-person ways that usually exist in smaller communities. Enron's collapse is the functional equivalent of the small-town event. A similar phenomenon occurred in the Oklahoma City Bombing case, and that case was transferred from all districts in Oklahoma to Denver, Colorado despite the fact that several potential districts in Oklahoma contain metropolitan venues with relatively large populations.

78. Attention and Memory. A third reason why a change of venue is more likely to be necessary from a smaller community is that individual cases would usually receive less attention in a larger area. They have to compete with a greater number of other local news stories. For the same reason, it would tend

to fade away more quickly after its "15 minutes of fame."

79. That is clearly not true here. Like "The Great Flood," "The Great Earthquake," or "The Oklahoma City Bombing" in other places, this case is now part of the Houston venue's collective memory and cultural consciousness, and will be embedded there for many years. Given the Houston Chronicle's and other media's continued coverage of all things "Enron," including day-to-day coverage of the trial involving the "Nigerian Barges defendants," as well as the upcoming trial of the "Broadband defendants," it is clear that there has been and will be no forgetting of the sort that can often occur if there is a substantial delay between the last pretrial publicity and the trial.

80. Case Connection. A fourth reason the population size is important is that the number of people with a direct connection to a case is fairly stable across cases. The number of parties and their families and friends, the witnesses, those who live nearby or have some involvement, plus all of their families and friends, are not much different in a typical case whether arising in a large or a small community. But as a percentage of the total population, that percentage is much higher in a community with a small population than in a county with a large one, leading to a much greater proportional tainting of the jury pool in the smaller county.

81. That sort of proportional analysis actually favors a change of venue here. Given the number of people who lost money and jobs and others whose business interests were hurt, and their wide dispersal

in the Houston area, plus the fact that the number who had some personal connection was substantial in this case, as documented in DQ's survey, this is not like a case, even a notorious one, that touched only a limited number of people.

82. In sum, a large population is sometimes a factor that weighs against a change of venue, and I have discussed the reasons why that is usually true. Those reasons are either non-existent or actually favor change of venue here. Simply put, the large population of the Houston venue does not insulate Mr. Skilling and his co-defendants from the prejudicial effects of the massive pretrial publicity.

83. Importantly, while not the norm, transfers from a large venue are not aberrational. In my own experience, out of the 40 cases in which I have testified that were pending in venues with populations greater than one-half million people, trial judges have granted 16 motions to transfer (*i.e.*, in 40% of those cases), six of which were in venues with populations in excess of one million.

## VI. Voir Dire Issues

84. As explained below, it is my opinion that, given the huge amount of pretrial publicity and the adverse findings of DQ's survey, voir dire in this case is not a satisfactory alternative to a change of venue to assure the ability of Mr. Skilling and his co-defendants to receive a fair trial.

85. Problems in Relying on Voir Dire. I begin by pointing out that in several venue cases I have recommended that a good voir dire is an adequate

remedy to protect the defendant against prejudicial pretrial publicity. In fact, I have so testified even when called by the *defendant* to testify on the defendant's change of venue motion, and counsel knew I would testify against it.[10] However, in my opinion voir dire is inadequate in this case.

86. The courtroom is an intimidating place for most prospective jurors. Most people, and therefore most prospective jurors, are uncomfortable speaking in front of groups, something they are asked to do during voir dire in a criminal trial. Those in the courtroom will include the general public (probably including some angry victims), the media, courtroom staff, other jury panel members, attorneys, and particularly the judge, whom jurors view as having the highest status in the courtroom.

87. Extensive empirical research in social psychology has documented the degree to which attitudes and behavior are shaped and influenced by situational conditions.[11] That is, characteristics of the setting often determine behavior more than do the personality characteristics of the person in that setting. Prospective jurors are called upon to answer questions in front of a group of strangers. For over half a century, social psychologists have been studying the topic of the independence of individual judgment in a group setting. In one classic study, it was

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[10] Even though counsel in those other matters knew I would testify against their motion, they felt my testimony was relevant and helpful to establish why improved voir dire conditions were needed in light of prejudicial pretrial publicity.

[11] *E.g.*, Sarbin, T., "Contextualism: A World View for Modern Psychology, in J. Cole (Ed.) *Nebraska Symposium on Motivation* (1976).

demonstrated that over one-third of the subjects asked to judge the length of a line went along with the majority, even when that majority was clearly and demonstrably wrong in its judgment.[12] When the experimental stimuli are statements of opinion endorsed by authority figures, the proportion of agreement is much higher.

88. A special problem is that questioning takes place in the courtroom, where the basic notions of justice and good citizenship are the prevailing ethos. One is on one's best behavior. It is not easy to tell the judge sitting up on the bench in a black robe that one cannot do one's civic duty, cannot be fair and impartial, cannot follow the instructions of the court, and cannot be a good citizen.

89. Thus, the immediate environment exerts a powerful influence on what people say and do. The voir dire setting makes jurors highly sensitive about the expected consequences of their words and actions.[13] The voir dire process may inhibit even the most conscientious jurors from responding frankly and openly. Individuals are concerned about whether they receive approval or disapproval from others. Thus, they devote considerable time and energy to trying to

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[12] Asch, S., "The Effects of Group Pressure Upon the Modification and Distortion of Judgments," in H. Guetzlow, ed., *Groups, Leadership and Men*, Carnegie Press, 1951.

[13] For a discussion of the effects that perceived consequences have on attitudes and beliefs, see Collins, B. and Hoyt, M., "Personal Responsibility for Consequences: An Integration of the Forced Compliance Literature," *Journal of Experimental Social Psychology*, 558-93 (1972).

learn what factors will have a positive influence on how they will be received or evaluated, and they try to behave in a manner that will give a favorable impression.[14] This is particularly true in the presence of a respected authority figure, such as the judge, who is often perceived as having a higher social status than the juror, especially in the courtroom.

90. When prospective jurors become aware of specific "qualities" that the court is looking for in a juror, such as being fair and impartial, they are likely to give the appropriate responses. This phenomenon is what social psychologists have termed "evaluation apprehension," or heightened concern for what respected authority figures think of them.[15] Prospective jurors learn the right answers not only through pre-instructions, body language, and their own knowledge and education, but from their sense of what is appropriate for a juror in an American courtroom. This is not to say that a significant number of jurors dissemble or ignore their oath; it is to say that their responses are filtered through an internal prism.

91. Importantly, the expressed attitudes of prospective jurors are also greatly affected, and can be modified, by what they learn about the beliefs and attitudes of other prospective jurors and their community at large. It is not uncommon for jurors to

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[14] Arkin, R., et al., "Social Anxiety, Self-Presentation and the Self-Serving Bias in Causal Attribution," 38 *Journal of Personality and Social Psychology* 23 (1980).

[15] *E.g.*, Rosenberg, M., "When Dissonance Fails: On Eliminating Evaluation Apprehension from Attitude Measurement," *Journal of Personality and Social Psychology* 28 (1965).

adopt what is called a "social desirability response set."[16] That is, prospective jurors will attempt to respond in what they may consider is a socially appropriate manner instead of by simply being honest and forthcoming. This social behavior pattern actually causes some people to modify their own answers to conform with those which they have heard expressed earlier by other jurors. The tendency to conform in a group has been well documented in the social psychology literature. The effect of this tendency is that opinions given in public often differ from opinions given in private.[17] It is difficult to educate jurors so that they understand that the purpose of voir dire is to get at jurors' real feelings, not to get people to say they are fair and impartial.

92. In addition, voir dire is an unfamiliar and uncertain situation for most prospective jurors. In unfamiliar situations, people are highly susceptible to "social comparison information," indications from other persons about the appropriateness of their behavior, attitudes, and feelings.[18] Thus, voir dire tends not to expose the honest extent of bias when the panel is pre-instructed that the goal is "to achieve a jury that is fair and impartial," and told about the presumption of innocence and the need to decide the case only on the evidence presented in court. These instructions have

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[16] Marlowe, D. and Crowne, D., "Social Desirability and Response to Perceived Situational Demands," 25 *Journal of Consulting Psychology* 109 (1968).

[17] *See* Hare, A. P., *Handbook of Small Group Research*, The Free Press of Glencoe, 1962, and studies cited therein.

[18] *E.g.*, Festinger, L., "A Theory of Social Comparison Processes," 7 *Human Relationships* 117 (1954).

the effect of educating jurors as to what the "correct" answers are in voir dire. The problem is then exacerbated when jurors see one of their number "fired" for giving an honest response that also happens to reveal a bias (that is, of course, unless jurors are trying to escape jury service in a long and difficult trial, in which case some may seek to demonstrate similar biases in their responses whether or not those biases are present).

93. The psychological influences discussed above operate in voir dire to mask or distort juror responses to precisely the kind of highly difficult questions that will be asked in this case. Prospective jurors who are concerned about how they will be evaluated by others in the courtroom, or who are answering in a socially desirable fashion in order to obtain the court's approval, are unlikely to admit to prejudice. At the very least they tend to minimize prejudicial knowledge or attitudes, and to exaggerate their willingness and ability to put aside such prejudice. Nor are they likely to concede confusion concerning the basic constitutional tenets that will govern this trial.

94. Prospective jurors ask themselves how they look in comparison with others before answering a question. For example, some prospective jurors knowingly will cover up certain feelings or opinions when questioned in voir dire. Others will consciously try to have their answers conform as closely as possible to those of other members of the group, especially answers of those who appear to be the most "respectable" members of the group. Still others will contrive to be seated or excused by adjusting their

responses to the results observed during the questioning of other prospective jurors. Socially acceptable responses to voir dire questions are established early in the voir dire process. These responses appear continuously throughout the examination, so that less and less honest information is elicited from the venirepersons over time.

95. Inability of a "Fair and Impartial" Voir Dire Question to Protect Fair Trial Rights. In cases where there is a concern about prejudicial pretrial publicity, lawyers and judges often approach the issue by asking prospective jurors a conclusory question such as, "Can you put aside whatever you may have read or heard about this case before you came to court, and render an impartial verdict based solely on the evidence you hear in court?" In the many voir dire transcripts I have reviewed over decades, it is rare to see more than a handful of prospective jurors acknowledge that they *cannot* be fair and impartial.[19] I almost never use a "fair and impartial" question in venue surveys because there is so much pressure, even in an anonymous survey, for respondents to give the socially desirable and "good citizen" response. Those who perceive themselves or wish to be perceived as good citizens are reluctant to admit they cannot be fair. The same "good citizen" impulse leads a number of respondents even in anonymous telephone voting surveys to claim that they are registered to vote when in fact they are not.[20]

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[19] E. Bronson, *supra*, note 8.

[20] Silver, B., *et al.*, "Who Overreports Voting?" 80 *American Political Science Review* 6, 13 (1986).

96. In addition to the social desirability pressure to give the "proper" response, there are other reasons not to rely on such assurances of fairness. For many people in this case, as evidenced by the responses to open-ended question 5 from DQ's survey, the only "fair" verdict is guilty.

97. Ferreting out bias in prospective Houston jurors in this case will be exceedingly difficult. Many of us are unable to recognize our biases or to recognize our weakness in being able to control them. I wanted to develop a test that could measure skill at self-assessment and control of bias, but the difficulty was how to determine whether my subjects were able to be fair in situations where I might have been dubious about their ability to do so. How could I tell if they were really being fair when I couldn't objectively know what fair was in any particular set of circumstances? I came upon a solution. There are some situations, for example, in which the inference of bias is so strong that the law clearly states that a prospective juror is unacceptable because of bias per se, what is called in some jurisdictions "actual bias" rather than "implied bias." One of these "actual bias"-type relationships is between parent and child. Most of us honestly think we can be fair in a dispute between our own child and another child. I tried a simple experiment a few years ago to test people's ability to measure their own bias in such a situation.

98. In my experiment, subjects were given a scenario in which they were told that in this hypothetical they have been selected to serve on a jury in a criminal trial, and the scenario continued as follows (with minor omissions):

The judge begins the jury selection by telling you a little about the case you will hear, and it turns out that it is the very case in which your father was the victim of a mugging. You don't know the details; he had told you only that when he was mugged, he was severely injured, and had to be hospitalized. But he will not be testifying in the case.

You are then placed under oath, so assume that you are under oath as you participate in this study. The judge tells you that you will be questioned to determine your ability to be fair and impartial in the case.

The judge stresses the importance of answering questions honestly, fully, and thoughtfully. In addition, the judge gives you some instructions about the law. One instruction is about the presumption of innocence. This means that in our legal system, jurors are required to presume that a defendant is innocent until the evidence presented in court convinces them, beyond a

> reasonable doubt, that the defendant is guilty.
>
> After you informed the judge that you know something about the case and that the victim is your father, the judge questions you individually. You tell him that you had only heard that it had happened, but you hadn't heard any facts or details. The judge tells you that in order to sit as a juror, you would have to put aside whatever you may have heard about this case and any feelings you may have, plus assume the defendant is innocent, and then decide the case solely on the evidence presented in court. He also tells you that your father will not be a witness, nor will he be testifying in the case.

99. The respondents were then each told what their duties as a juror would be, including keeping an open mind, remaining impartial, setting aside all you know and feel, and reaching a verdict based solely on the evidence presented in court. Approximately one-third of the subjects still thought they could be fair jurors in a situation where by definition and by common sense they could not be.

100. The hostile feelings about the Enron case are so deep and pervasive in Houston, as revealed in

the media and the survey, that it will be nearly impossible for well-intentioned Houston venirepersons to put aside those feelings even if they say they can. As a result, voir dire will not be adequate in this case to sufficiently identify and eliminate all prejudice in the Houston area jury pool. For the foregoing reasons, it is my opinion that voir dire is an ineffective means by which to identify and exclude jurors who harbor a bias against Mr. Skilling and his co-defendants.

## VII. Conclusion

101. It is my professional opinion, based on over 30 years of substantial research and testifying experience with respect to venue issues, that the massive pretrial publicity in the Houston venue, not present in comparable venues, has engendered an unmistakable and unshakable predisposition against Mr. Skilling and his co-defendants. Even if voir dire could identify and exclude those prospective jurors who consciously acknowledge their biases (which I do not believe is possible), the resulting jury will be non-representative of the Houston venue and will no doubt contain some members who bear latent or unconscious biases against these defendants and some who, even without bias going into the trial, will feel significant pressure to convict those who their community perceives to be the cause of so much pain in the Houston venue.

I declare under penalty of perjury that the foregoing is true and correct, except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

Executed on this 7th day of November 2004, at Chico, California.

s/Edward J. Bronson
EDWARD J. BRONSON

# APPENDIX G

## DECLARATION OF STEPHEN L. KLINEBERG

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff,<br>v.<br>JEFFREY K. SKILLING and RICHARD A. CAUSEY, and KENNETH LAY,<br>Defendants | ) | Crim. No. H-04-25<br>(Lake, J.) |

## DECLARATION OF STEPHEN L. KLINEBERG, PH.D., IN SUPPORT OF DEFENDANT JEFFREY SKILLING'S MOTION TO TRANSFER VENUE

I, STEPHEN L. KLINEBERG, PH.D., declare and state:

## Qualifications

1. I am a Full Professor of Sociology at Rice University in Houston, Texas, where I have been employed since 1972. Prior to joining the Rice faculty, I served for six years as an Assistant Professor of Social Psychology in the Sociology Department at Princeton University.

2. I earned a Bachelor's Degree in Psychology from Haverford College, a Master's Degree in Psychopathology from the University of Paris, and a Ph.D. in Social Psychology from Harvard University.

3. My academic specialty is the study of community attitudes, with a particular focus on the greater Houston area. I have written many publications, given hundreds of presentations, and taught a variety of courses over the years that measure and analyze sociological trends in Houston. I have written and taught extensively in urban sociology, social change, environmental sociology, and survey methodologies, and appear frequently on radio and television. A copy of my curriculum vitae is attached to this declaration.

## The Houston Area Survey

4. In March 1982, I initiated the "Houston Area Survey," a comprehensive series of annual telephone

interviews that measure systematically the demographic patterns, life experiences, attitudes, and beliefs among successive representative samples of Harris County residents. Two months after the first survey was completed, Houston's oil boom collapsed. The continuing studies have tracked the city's recovery from deep and prolonged recession in the 1980s into a restructured economy and a demographic revolution. For 23 years, the surveys have measured area residents' attitudes toward a wide range of social issues, including economic prospects, crime, poverty, discrimination and affirmative action, immigration and ethnic diversity, environmental concerns, abortion and homosexuality, education, public transportation, and downtown development. By exploring so many issues over so many years, the Houston Area Survey provides a unique source of continually updated and reliable information on the demographic patterns, attitudes, and life experiences of area residents. No other city in America has been the focus of a long-term empirical study of this scope and depth, and none has undergone the remarkable transformations that Houston has experienced during this period.

5. Each year, in collaboration with students and colleagues, I design the survey instrument in a way that will provide reliable measures of public attitudes on a variety of important issues. Assisted by a local research firm, scientifically selected representative samples of Harris County residents are interviewed by telephone, using the newly designed and carefully pre-tested survey instrument. The raw data from the interviews are then compiled

and analyzed, and I prepare a series of regularly published reports, as well as articles in the local media, presenting the findings and conclusions of this research. I also speak about the survey findings to the wider Houston community and beyond through more than 90 invited presentations each year, in a wide variety of venues. In addition, the survey's interactive web site (at www.houstonareasurvey.org) is continually updated to ensure that the latest findings of this research are made readily available to organizations and individuals across the country.

## Assignment

6. I have been asked by counsel for defendant Jeffrey Skilling to discuss the sociological context surrounding the rise and fall of Enron in the Houston community, and to provide my opinion regarding the social pressures that are likely to influence the decision-making process of a Houston jury in this case.

7. In preparing this declaration, I have reviewed the polling data and media analyses that have been provided to me by Mr. Skilling's counsel. My opinion is based on a review of these materials and on the general knowledge and expertise I have developed over many years of researching and analyzing community attitudes and beliefs in Houston.

## The Symbolic Importance of the Rise and Fall of Enron

8. As Houston approached the new millennium, this was a city that was self-consciously in a process of fundamental redefinition. During most of the 20th century, particularly in the 1960s and 1970s, Houston was America's quintessential "boomtown." The continually rising price of oil, which increased ten-fold between 1970 and 1982, led to an unprecedented period of economic growth and expansion. While the rest of the nation was languishing in the "stagflating seventies," Houston's population expanded by almost 1 million people. In the years from 1970 to 1982, the oil and real estate boom secured Houston's title as the "Energy Capital" of the world. The city's success reflected and reinforced its strong emphasis on free enterprise and its disdain for zoning, taxes, and government regulations. Houstonians believed strongly in the entrepreneurial spirit, and held all those who embodied it in high esteem.

9. In May 1982, two months after the first Houston Area Survey, the oil boom collapsed. The global recession had lowered the demand for oil just as new supplies were coming onto world markets. The price of Texas crude fell from $32 per barrel in early 1982 to less than $28 by the end of 1983, but Houston had been building and borrowing in the expectation of $50 oil. Within 18 months, a region that for more than a century had known only growing prosperity recorded a net loss of nearly 100,000 jobs. When the falling price of oil hit bottom

at less than $12 per barrel in late 1986, the recession had spread from the energy sector to the entire economy. One out of every seven jobs that were in Houston in 1982 had disappeared by early 1987, marking this as the worst regional downturn in any part of the country at any time since World War II.

10. By 1990, Houston had recovered from recession into a fundamentally different kind of economy. The longstanding resource-based economy, for which this region was so favorably positioned, was rapidly receding into history, replaced by a knowledge-based, high technology global economy. The source of wealth from now on would have less to do with control over natural resources, and more to do with human resources, with the city's stock of intellectual capital, creativity, and technical skills. Houston's business leaders were united in recognizing that, if the city was to have a good chance for success in the "knowledge economy" of the new century, it would need to restructure and diversify its economy, and enhance its attractiveness, urban amenities, and overall quality of life.

11. By the late 1990s, Enron had become the most widely recognized embodiment of Houston's progress in meeting that challenge. It was a different kind of energy company, poised for achievement in a new economic era. Houston's traditional oil and gas enterprises were focused primarily on the exploration and distribution of the most important natural resource of the fading industrial economy.

Enron, on the other hand, pioneered the business of energy trading, which placed a premium on information, technology, and the intellectual skills of its employees, and it was remarkably successful. Enron became Houston's largest, most visible, and most prosperous company, prompting other energy enterprises to follow its lead and contributing importantly to revitalizing the entire energy industry.

12. Enron had a special additional significance for Houston area residents. It was the preeminent symbol of their city's emergence out of the long shadow of the oil bust. It offered concrete proof that Houston was in the process of making a smooth transition into the new century, positioning itself at the forefront of the knowledge-based economy. Enron offered a promise of both stability and liberation, assuring Houstonians that their city would remain the nation's energy capital, even while its financial security and quality of life would no longer depend on the "booms" and "busts" of world oil prices. By the late 1990s, the Houston Area Survey was showing clearly that public optimism had returned to levels that had not been seen since the height of the oil boom. Back in March 1982, with the economy still in full boom, 76 percent of area residents rated local job opportunities as either "excellent" or "good." The positive economic assessments fell to just 11 percent in the depths of recession in 1987, and then rose again through the 1990s to reach 72 percent in 1998 and 73 percent early in 2001. Companies like Enron embodied

Houston's renewed hopes for the future, and Enron itself stood head-and-shoulders above the rest.

13. Beyond its obvious economic success, Enron was also the foremost social and charitable force in the greater Houston area. The company donated vast sums every year to an extraordinary variety of local charities and nonprofit organizations, fueling the vitality of the city's most significant museums, hospitals, arts venues, and research groups (including even a one-time contribution to the Houston Area Survey). No other company came close to matching Enron's dedication to these community assets. Enron's top executives, especially Ken Lay and Jeff Skilling, were widely known and universally respected. Ken Lay himself was so prominent in the city's political and cultural circles that many considered him to be a strong candidate for mayor, and some even compared him to legendary Houston leaders such as Jesse Jones and Ben Love. Enron was arguably the single most important company in Houston, a source of civic pride that was central to the city's self-image and self-confidence. Skeptics were few and far between. In Houston, opposing Enron was a little like opposing the city itself.

14. All that changed dramatically in late 2001, when Enron suddenly collapsed and filed for bankruptcy. Thousands of Houston workers lost their jobs, and many more lost significant portions of their investments in Enron's stock and retirement plans. The effects were felt throughout the entire

local economy, and a substantial number of Houstonians were either victimized themselves or knew someone who was. It did not take long for Houston's good will toward Enron and its executives to evaporate. The city's pride in its premier company gave way to anger, embarrassment, and a deep sense of betrayal. Enron now came to be seen as a disgrace to the community, a black eye on the city and its surrounding areas. Houstonians were firmly united behind the employees and pensioners whom they perceived to be suffering as a result of the collapse, and there were widely expressed feelings of distrust and resentment toward Mr. Lay, Mr. Skilling, and other Enron leaders. The relationship between company and city was now reversed: suddenly, to *support* Enron had become tantamount to opposing Houston itself.

15. Given Enron's symbolic importance to this city, and the place it occupied in Houston's social fabric, such widespread feelings of hostility were not surprising. The city's leading corporate icon, its greatest entrepreneurial success story, had disintegrated without warning. The company that had done so much to help the city rise up from economic collapse had now dealt the community its biggest blow since the oil bust itself. Houstonians had invested their trust, confidence, and gratitude in Enron, and they had looked to the company to carry them and their city successfully into the new millennium. Enron represented the future of Houston's energy industry, its freedom from continued reliance on oil, and its confidence that the city would be just as successful in the "knowledge

economy" of the 21st century as it was in the "resource economy" of the twentieth. With Enron's failure, however, many Houstonians came to believe that the city's earlier success was a façade, that unscrupulous executives had pulled the wool over the eyes of the whole city. Enron was supposed to signify the end of Houston's boom-to-bust volatility, but it served instead as yet another example of its vulnerability and weakness. Everything positive that the company had once come to symbolize had been undermined. That the community now felt a deep and pervasive negativity toward Enron and its executives was hardly surprising.

## Community Pressure to Convict Mr. Skilling and His Co-Defendants

16. In light of the intensely felt and widely shared attitudes that Houstonians now express toward Enron in general, and toward Mr. Lay, Mr. Skilling, and other Enron executives in particular, it is my opinion that a Houston jury in this case will be under strong community pressure to convict the defendants.

17. The fall of Enron was a central event for residents of the Houston area. It generated a community-wide distress, affecting not only the local economy, but also the collective psyches of Houstonians themselves. Because of Enron's special relationship with Houston, its collapse left the city with a deep and pervasive sense of betrayal and anger. A great many potential jurors will share those sentiments themselves. Virtually all jurors will

be aware of these public perceptions and attitudes (either through their prior experiences or through the experience of the trial itself), and they are likely to feel a great deal of pressure to conform their verdict to those attitudes.

18. The pressure on the jurors will be intensified by their knowledge that they will return to the community when the trial is over, and will have to live with the personal and social consequences of their verdict. Jurors will know that a vote to acquit, even if required by the law, will result in anger and disbelief within the wider Houston community, because they know they live in a city with a deep and pervasive emotional stake in seeing these defendants convicted. There will be strong social pressures to convict, and this is likely to be a powerful influence on the jury's decision-making process.

19. Importantly, such pressures will operate on jurors regardless of whether they have formed their own opinions about the defendants' guilt or innocence in advance of the trial. The pressure will derive from the prospect of community responses that can be anticipated to occur after the trial is over. Under these circumstances, even a juror who is completely neutral and unbiased at the outset is likely to feel pressured to convict once the trial begins.

20. In my opinion, these kinds of social pressures and expectations would not exist (or would exist to a much lesser extent) in cities other than Houston. No other metropolitan area in the country has had the close relationship to Enron that Houston has known, and no other city has been as deeply affected by the Enron collapse. Moreover, as the media analysis of the Skilling coverage indicates, no other city is as emotionally invested in this case as Houston. In my opinion, a change of venue is essential in order to significantly reduce the serious risk of the jury's verdict being influenced by community pressures.

I declare, under penalty of perjury, that the foregoing is my true opinion. Executed on 6 November 2004 in Houston, Texas.

s/Stephen L. Klineberg
Stephen L. Klineberg, Ph.D.

# APPENDIX H

## DECLARATION OF ROY WEINSTEIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | ) | Crim. No. H-04-25<br>(Lake, J.) |
| Plaintiff, | ) | |
| v. | ) | Declaration of Roy Weinstein |
| JEFFREY K. SKILLING and RICHARD A. CAUSEY, and KENNETH LAY, | ) | |
| Defendants. | ) | |

## I. STATEMENT OF QUALIFICATIONS

**A.** Economics involves the study of decision-making in the presence of uncertainty, *i.e.* how people make choices.

**B.** I am an economist and President of Micronomics, LLC, an economic research and consulting firm. I have been engaged in economic research and consulting since 1969. My areas of specialization include industrial organization, corporate finance, antitrust economics, economic impact studies, the valuation of intellectual property, the use of econometrics and statistics, and the calculation of economic damages.

**C.** I received a Bachelor of Business Administration degree *cum laude* from City College New York in 1964 and a Masters of Economics degree from the University of Chicago in 1967. At City College, I received the Higgons Award as the graduating senior with the highest average in economics. I also was the recipient of the Berliner Award and was the winner of a statewide competition sponsored by the Industrial Relations Research Association. At Chicago, I received fellowships from the U.S. Public Health Service and the Walgreen Foundation.

**D.** I am a member of the American Economic Association, the National Association for Business Economics, and the Los Angeles County Bar Association.

**E.** I began my career in economic research and consulting in 1969. Since that time, I have been qualified as an expert witness before U.S. District Courts in more than 20 states. I also have testified as an economic expert before State Courts, U.S. Bankruptcy Court, the International Chamber of Commerce, the California Public Utilities Commission, the Texas Commissioner of Insurance, the Provincial Division in Ontario, Canada, and other regulatory and administrative bodies. I also have served as consultant to the Antitrust Division of the U.S. Department of Justice, the Internal Revenue Service, the Office of the Attorney General for the State of California and at least 21 other States, and the Office of the Governor for the State of California. I have served as a court-appointed expert in the areas of surveys, sampling, and the interpretation of survey results. Representative clients for whom I have worked include Northrop Corporation, Dell Computer Corporation, eBay, American-Multi Cinema, Inc., Wells Fargo Bank, Hyundai, Adidas, PepsiCo, Inc., Farmers Insurance, R.J. Reynolds Tobacco Co., Twentieth Century Fox Film Company, and the Oakland Raiders. In addition to cases in which I have testified, either at trial or deposition, I have consulted in numerous other matters in which oral testimony was unnecessary.

**F.** I also have spoken on issues relating to industrial organization and resource allocation before various professional groups. A summary of my qualifications and experience is set forth at Exhibit 1.

## II. ASSIGNMENT

**A.** I have been asked by counsel for Jeffrey Skilling to assess the actual and perceived economic impact of the so-called Enron victims' relief fund on potential jurors in the Houston venire. In carrying out this assignment, I have examined pleadings and papers in this case and related matters, including those involving the issue of venue. I have reviewed the extensive publicity that this matter has generated, including newspaper articles in the *Houston Chronicle* and other local and national publications. A summary of materials I have reviewed in connection with my work in this matter is set forth at Exhibit 2.

## III. SUMMARY OF OPINION

In light of the extensive publicity surrounding the Enron victims' relief fund, potential jurors in the

Houston venire are more likely than potential jurors in other venues to possess an actual or perceived economic interest in convicting the defendants in this case.

## IV. DISCUSSION

**A.** In the wake of Enron's bankruptcy, Congress passed the Sarbanes-Oxley Act of 2002. Among other things, the Act contemplates that the Securities & Exchange Commission and other federal agencies may establish funds for victims of allegedly fraudulent activities. Such "victims' funds" consist of the proceeds of any settlements, disgorgements, or penalties associated with corporate fraud litigation.

**B.** An Enron victims' fund has been established pursuant to Sarbanes-Oxley. To date, this fund contains well in excess of $400 million (Remarks by Stephen M. Cutler, Director, Division of Enforcement, Securities & Exchange Commission, February 19, 2004). This includes court-approved contributions of assets seized from former Enron executive Michael Kopper and others and settlements from Merrill Lynch, Citigroup and J.P. Morgan Chase.

**C.** I am aware that the Indictment in this case contemplates that in the event of convictions, all three defendants shall forfeit real and personal property constituting or derived from proceeds obtained directly or indirectly as a result of the claimed violations. (United States of America v. Richard A. Causey, Jeffrey K. Skilling and Kenneth L. Lay, July 7, 2004, paragraphs 123-125). Finally, I am aware the *Houston Chronicle* has reported repeatedly regarding the balance of the

Enron victims' fund, how its size increases whenever an Enron defendant pleads guilty, our would grow by tens of millions of dollars if Skilling, Lay, and Causey are convicted and their money is forfeited.

**D.** Economists understand that a rational decision-maker will weigh the benefits and costs associated with possible outcomes and make a decision that produces the maximum net benefit. To the extent that jurors are aware of the victims' fund and perceive of themselves or their community as victims, such jurors are more likely to make a decision that maximizes the fund, which here would weigh in favor of convicting Messrs. Skilling, Lay, and Causey and require them to forfeit their substantial assets.

**E.** From an economist's perspective, there are several types of potential jurors. The first type is one who perceives that he or she will be a direct beneficiary of the victims' fund (such as shareholders). The second type is one who perceives that he or she will be an indirect beneficiary of the victims' fund, such as those who have friends, family or acquaintances who were harmed by the collapse of Enron. The third type is one who perceives that he or she will be a tertiary beneficiary of the victims' fund (those who believe their community will benefit from the fund). A fourth type of juror is one who does not believe he or she will be a beneficiary at all.

**F.** I have reviewed polling data provided to me by counsel for Mr. Skilling. It demonstrates that Houstonians are between two and three times more likely than respondents from other venues to personally know someone who was harmed by the bankruptcy of Enron and between six and nine times as likely as respondents from other venues to believe their local economy was more impacted than the economies of other cities in the United States.

**G.** Exhibit 3 sets forth comparisons between the impact of Enron's bankruptcy in Houston and other parts of the country. Obviously, the actual economic impact of the Enron bankruptcy was greatest in the Houston area. The number of creditors in the Houston area is far greater than the average number of creditors per state outside of Houston. Personal income growth had been far greater in Houston than elsewhere in the United States until after the bankruptcy, when personal income growth in Houston fell below growth elsewhere in the United States.

**H.** Given that the economic impact of the Enron bankruptcy was greatest in the Houston area and that the highest concentration of Enron victims is in Houston, potential jurors who reside in the 13-county Houston Division jury pool are more likely to have an actual or perceived financial stake in finding Skilling and his fellow defendants guilty than jurors located in other parts of the country. This is because a guilty verdict will produce a further contribution of Skilling's assets to the victims' fund and will enhance the likelihood that assets associated with other Enron-related litigation will ultimately be seized by the courts and paid into the fund. Consequently, jurors drawn from the 13-county area of Houston are more likely to perceive of themselves as direct, indirect, or tertiary beneficiaries of the victims' fund, and less likely than jurors in other venues to be financially disinterested.

**I.** Based on my analysis as an economist and the polling data I have reviewed, it is my opinion that, other things being equal, rational jurors in the Houston venue are significantly more likely to convict these defendants than rational jurors in other venues.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 4, 2004, at Los Angeles, California.

s/Roy Weinstein
Roy Weinstein

# APPENDIX I

## SUPPLEMENTAL DECLARATATION OF PHILIP ANTHONY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | ) | Crim. No. H-04-25<br>(Lake, J.) |
| Plaintiff, | ) | |
| v. | ) | |
| JEFFREY K. SKILLING and RICHARD A. CAUSEY, and KENNETH LAY, | ) | |
| Defendants. | ) | |

## SUPPLEMENTAL DECLARATION OF PHILIP K. ANTHONY, PH.D, IN SUPPORT OF DEFENDANT JEFFREY SKILLING'S MOTION TO TRANSFER VENUE

1. At the request of counsel for Jeffrey Skilling, I have reviewed the Declaration of David A. Zagorski, Ph.D., in Response to Defendants' Motion to Transfer Venue, Dr. Zagorski's survey materials, and the sections of the Government's Memorandum of Law in Response to Defendants' Joint Motion to Transfer Venue that relate to survey issues. This Supplemental Declaration analyzes those materials and responds to criticisms leveled against the survey DecisionQuest previously conducted for Mr. Skilling in October, 2004, and the conclusions set forth in my November 5, 2004 Declaration in support of Mr. Skilling's motion to change venue. If called as a witness in this action, I could and would testify competently to the matters stated herein.

2. Zagorski's Report on His Data. As set forth in greater detail at paragraphs 6-11 herein, I observed the following about the manner in which Dr. Zagorski reports his data and his conclusions based on that data:

a. Dr. Zagorski is highly selective in reporting his data in terms of comparing attitudes in Houston to those in Phoenix. In particular, he performs an analysis of verdict predisposition only in terms of percentages of those persons in each venue who said they were "familiar with" the criminal indictments against Mr. Skilling and his co-defendants, but fails to report what percentage of the sample in each venue *as a whole* was predisposed to find the defendants guilty. Dr. Zagorski's failure to report the latter statistic is notable because, when we performed the analysis for him, we found there to be statistically significant differences between Houston and Phoenix. The results of this analysis are reported *infra* in Table 1.

b. Dr. Zagorski's report also fails to take into account the effect his control questions have on the data. Although he reported the raw results from his control questions, he did not adjust the data in his primary questions to take into account the fact that a significant number of his respondents appeared to be "guessing" in response to his information-laden questions and multiple choice answers (what he called a "truthfulness check"). Although Dr. Zagorski did not provide us with his raw data so we could remove from his calculations those persons who were shown by the control to be guessing, upon making an educated estimate of what that adjustment should look like, we found there to be an even greater statistically significant difference between his verdict predisposition data from Houston and Phoenix. The results of this analysis are also reported *infra* in Table 1.

c. Dr. Zagorski never offers a conclusion based on his data as to whether he believes the defendants can receive a fair trial in Houston. Given his finding that nearly 64% of what he views as the relevant population are predisposed to find Mr. Skilling guilty, Dr. Zagorski's survey data clearly establishes that Houston is an inherently *unfair* venue in which to try this case.

d. Dr. Zagorski purports to come to a number of substantive conclusions based on his determination that no statistically significant difference exists between certain data points. His purported conclusions are improper and insupportable because, if no statistical significance exists, the only legitimate conclusion that can be drawn is that "no conclusions can be drawn."

3. Zagorski's Survey Design and Methodology. As set forth in greater detail at paragraphs 12-16 herein, Dr. Zagorski's survey suffers from certain design flaws (as compared to the design of DecisionQuest's survey).

4. Responses to Zagorski Critique. My responses to the criticisms and comments made by Dr. Zagorski about DecisionQuest's survey design and methodology are addressed at paragraphs 17-22 herein.

5. Response to Other Survey Criticisms. My responses to the additional criticisms and comments offered by the Task Force, but without any supporting opinions or analysis from Dr. Zagorski, are addressed at paragraphs 23-26 herein.

## DR. ZAGORSKI'S DATA AND CONCLUSIONS

6. Although there are a number of issues raised by the manner in which Dr. Zagorski reports his data and conclusions, five in particular stand out as requiring clarification and correction:

a. the selective manner in which Dr. Zagorski reports predisposition of guilt findings (Zagorski Declaration ¶¶ 26-28, 31, and Table 4);

b. Dr. Zagorski's failure to opine as to whether, in light of his survey results, the defendants can obtain a fair trial in Houston;

c. his erroneous conclusion based on his selective presentation of predisposition of guilt data that "residents of Houston are no more biased against the defendants than are the residents of Phoenix" (*Id.* ¶ 36);

d. his erroneous conclusion that data obtained through his control questions regarding "Allied Pharmaceutical Corporation" suggest "the possibility that any indicted executive would be at least equally likely to find an open-minded jury in Houston as in Phoenix" (*Id.* ¶ 37); and

e. his erroneous conclusion based on his selective presentation of predisposition of guilt data that "[r]espondents in Houston . . . were nearly three times more likely than those in Phoenix to hold the opinion that Jeffrey Skilling is not guilty of the charges against him" (*Id.* ¶ 38).

7. Selective Reporting of Data. Dr. Zagorski reports his findings as to guilt predisposition only in terms "the proportion of informed respondents," *i.e.*, only with respect to those respondents who claimed to be "familiar with" the criminal indictments. (Zagorski Declaration ¶ 36 and Table 4) This is just a *subset* of the total population surveyed (90.8% of the Houston respondents and 70.5% of the Phoenix respondents), however. Because Dr. Zagorski's survey determined that far fewer Phoenix residents were informed about this case than Houston residents, using the "informed respondents" figure suppresses statistically significant differences between the two cities that are otherwise observable from his data. Dr. Zagorski also further suppresses the statistically significant differences between the two cities by failing to take into account the data from his control questions.

a. The proper background against which to compare Dr. Zagorski's data from Houston and Phoenix is the total population surveyed (400 respondents in each case), not just the subset of the population who said they were familiar with the indictments. If this were a case involving biases or prejudices generated solely by media coverage, one might be able to argue for or against examining such a population subset. As I explained in my prior declaration, however, substantial evidence exists that Houston area residents harbor biases that result not just from media exposure, but also from the close association of Mr. Skilling and his co-defendants with Enron Corporation and the sense among Houston area residents that their community was victimized by Enron's collapse. Furthermore, any jury to be selected in this case will be chosen from the population as a whole (not just from those familiar with the indictments).

b. To recalculate Dr. Zagorski's figures we need to back out the number of persons who responded "definitely guilty" or "probably guilty" in Houston and Phoenix:

- In Houston, for example, of 400 respondents, 90.8% (or 363 persons, according to the table on page 14 of Dr. Zagorski's declaration) were familiar with the Enron matter. Of those 363 persons, 63.6% expressed some presumption of guilt as to Skilling. Thus, the actual number of respondents expressing this presumption was 363 x .636 = **231**.

- In Phoenix, of 400 respondents, 70.5% (or 282 persons, according to the table on page 16 of Dr. Zagorski's declaration) were familiar with the Enron matter. Of those 282 persons, 68.1% expressed some presumption of guilt as to Skilling. Thus, the actual number of respondents expressing this presumption was 282 x .681 = **192**.

c. We can now recalculate the relative percentages of the persons in Houston and Phoenix who expressed a presumption of guilt as to Skilling as follows:

- In Houston, dividing 231 by the total sample size of 400 produces a presumption of guilt percentage of **57.8%**.
- In Phoenix, dividing 192 by the total sample size of 400 produces a presumption of guilt percentage of **48.0%**.

d. After applying the "chi-square" test for statistical significance (the same test used by Dr. Zagorski for his analyses) to this data, a statistically significant difference of chi-square(1) = 7.63, $p < 0.01$ is found. Thus, Dr. Zagorski's survey data, when properly analyzed, strongly corroborates my earlier findings that the jury-eligible population in Houston is significantly more biased against Mr. Skilling and his co-defendants than the jury-eligible population in Phoenix.

e. One further adjustment also must be made to properly understand what Dr. Zagorski's survey data shows. Dr. Zagorski's report further depresses the differences between his verdict predisposition results for

Houston and Phoenix by failing to adjust for the guessing that occurred in his survey.

- Unlike the survey DecisionQuest conducted for Mr. Skilling, which provided only the bare minimum information necessary to orient respondents to the material issues, Dr. Zagorski provided extensive information to respondents including the defendants' names, their former positions, and a multitude of unnecessary details about the charges against them. In addition, unlike the DecisionQuest survey, Dr. Zagorski utilized a closed-response format in which respondents were asked to pick among the choices of definitely guilty, probably guilty, probably not guilty, definitely not guilty, etc.

- The foregoing features of Dr. Zagorski's survey, among others, made it much more likely that respondents would think they had sufficient information with which to "guess" the answers to his questions as opposed to just revealing their feelings. Hence, Dr. Zagorski built in a "control" (what he calls a "truthfulness check") to identify guessing by asking about fictitious indictments of an "Allied Pharmaceuticals" executive.

- Based on his control question, Dr. Zagorski found that 14% of Houston respondents incorrectly claimed to have heard about the fictitious indictments, and that an even larger percentage (15.8%) of Phoenix respondents did so as well. Moreover, once they were guessing, persons in Phoenix apparently guessed "guilty" to a greater degree than their counterparts in Houston (46% vs. 39.3%).
- Because Dr. Zagorski did not provide the Court or DecisionQuest with the individual response data

from his survey, we cannot determine for sure which of the persons who were guessing in the survey (*i.e.*, the ones who said they had heard of the fictitious "Allied Pharmaceuticals") also had said that they thought Mr. Skilling or his co-defendants are guilty. A fair, common sense assumption, however, would be that the respondents in each venue likely guessed "guilty" as to the Enron-related defendants in the same proportion as they guessed "guilty" as to the fictitious Allied Pharmaceuticals executive.

- Applying this assumption to Dr. Zagorski's control data, we would see a rough "guilty guessing" rate in Houston of 5.5% (14% of 400 person sample = 56 persons; 56 x 39.3% = 22 persons; 22 ÷ 400 = 5.5%); and a rough "guilty guessing" rate in Phoenix of 7.3% (15.8% of 400 person sample = 63 persons; 63 x 46% = 29 persons; 29 ÷ 400 = 7.3%).

f. After conducting a thorough analysis of Dr. Zagorski's data that includes relating his findings to the populations as a whole and making the above-described control adjustments, the results of his survey can be summarized as follows:

**Table 1 - Comparison of Total Respondents in Venue Expressing Belief That Defendants Are Guilty**

| | **Houston** | **Phoenix** | **Chi Square Result** | **Statistically Significant?** |
|---|---|---|---|---|
| *Before Making Control Adjustment:* | | | | |
| Skilling | 57.8% | 48.0% | 7.63, $p < 0.01$ | Yes |
| Lay | 57.8% | 48.2% | 7.25, $p < 0.01$ | Yes |
| Causey | 55.0% | 45.2% | 7.61, $p < 0.01$ | Yes |
| *After Making Control Adjustment:* | | | | |
| Skilling | 52.3% | 40.7% | 10.63, $p < 0.01$ | Yes |

| | | | | |
|---|---|---|---|---|
| Lay | 52.3% | 40.9% | 10.17, p < 0.01 | Yes |
| Causey | 49.5% | 37.9% | 10.75, p < 0.01 | Yes |

g. Contrary to what Dr. Zagorski implies in his declaration, his data confirm that there is a statistically significant difference in each of the foregoing areas, and, more generally, that the jury-eligible population in Houston is significantly more biased against Mr. Skilling and his co-defendants than the jury-eligible population in Phoenix.

8. Failure to Opine on Fairness of Houston Venue. One striking omission from Dr. Zagorski's declaration is a conclusion as to whether the defendants can or cannot get a fair trial in Houston. The prior survey we conducted for Mr. Skilling demonstrated that over 30% of jury-eligible persons in Houston harbored negative opinions about him. A later survey we did for Mr. Lay demonstrated that over 41% of jury-eligible persons in Houston harbored negative opinions about him as well. Both of these figures are highly significant (because they result from a largely unaided, open-ended question) and support the conclusion that the defendants cannot receive a fair trial in Houston. In contrast, Dr. Zagorski claims to have determined that nearly 64% of what he views as

the relevant subset of Houston area residents are predisposed to find Mr. Skilling guilty.

a. I believe that, had Dr. Zagorski been asked to offer an opinion as to whether the defendants can obtain a fair trial in Houston, he would have had to say "no" based on his own method of analyzing the data.

b. Dr. Zagorski states in paragraph 1 of his declaration that he is employed by the firm of Dimitrius and Associates in Pasadena, California. I am familiar with the principal and founder of that firm, Dr. Jo-Ellan Dimitrius, who is a well known defense jury consultant on high-profile criminal cases (including, among others, the O.J. Simpson case and the Richard Ramirez "Nightstalker" case). As reported in the *Sacramento Bee* (online version of June 5, 2003), Dr. Dimitrius has said that a prejudice showing of "65 percent and more is quite convincing" for venue transfer motions.

c. Although I disagree with the manner in which Dr. Zagorski reports his data, and would disagree with Dr. Dimitrius that there are any hard and fast rules for what makes a "compelling" showing of prejudice, I agree in this case that, using Dr. Dimitrius' standard, Dr. Zagorski's data makes a convincing showing for a transfer of venue here.

9. Improper Conclusion Regarding Houston vs. Phoenix Biases. Dr. Zagorski performed a "chi square" test on his selectively reported data, and correctly concluded that there is no statistical significance between the Houston and Phoenix populations based on his reported figures (63.6% vs. 68.1% for Skilling; 60.6% vs. 64.2% for Causey; and 63.6% vs. 68.4% for Lay). However, he then purports to conclude that his statistical test shows that "the residents of Houston are no more biased against the defendants than are the residents of Phoenix." (Zagorski Declaration ¶ 36) No statistician can legitimately draw such a conclusion from a finding of no statistical significance, however.

a. If no statistical significance between two data points is found by the "chi square" test, then any difference between those points is just as likely to be attributed to chance as anything else. In other words, the only possible conclusion that can be reached is that "no conclusion can be reached" – attitudes in the two venues could be the same or they could be different.

b. In offering a conclusion that his data prove that bias in Houston is "no greater than" bias in Phoenix (at least as among Dr. Zagorski's self-selected group of persons who were familiar with the indictments), Dr. Zagorski commits the logical fallacy of "accepting the null hypothesis."

c. To illustrate: "If a person has a beard, then he must be a male." That is a logical statement that is generally true. It does not, however, justify the conclusion that if a person does NOT have a beard, he must NOT be a male. Applying this logic to Dr. Zagorski's data, if we observe a statistically significant difference between two samples, then we may infer a difference between the two underlying populations (*e.g.*, Houston and Phoenix). On the other hand, to say "If we do NOT observe a difference in the samples, then there is NO difference in the underlying populations" is a conclusion that all statisticians would reject. As noted, the only accurate conclusion in such a situation is that no conclusion about the data can be drawn.

10. Improper Conclusion Regarding "Possibilities." Dr. Zagorski again commits the logical fallacy of "accepting the null hypothesis" when he concludes from what he acknowledges to be statistically *insignificant* data that the data "raise the possibility that any indicted executive would be at least equally likely to find an open-minded jury in Houston as in Phoenix." (Zagorski Declaration ¶ 37) Statistically, the only conclusion that can be drawn from the data (as Dr. Zagorski presented and analyzed it) is that *no conclusion* can be drawn about whether persons familiar with the indictments are more "open-minded" in Houston or Phoenix.

11. Improper Conclusion Drawn from Null Sets. Dr. Zagorski relates similarly distorted findings when he writes at Paragraph 38 of his declaration that Houston residents were "three times more likely" than Phoenix residents to believe Skilling is not guilty. He is, of course, purporting to describe the difference between a 1.1% finding in Phoenix and a 3.0% finding in Houston (Zagorski Declaration ¶¶ 28, 31 and Table 4). Given the relatively small size of Dr. Zagorski's sample, there is no statistical significance between 1% and 3%, and, moreover, both figures are so small that this is tantamount to saying that 3 times 0 is somehow greater than 0. Particularly in light of Dr. Zagorski's previously disclosed finding that there is no statistically significant difference between the two venues (Zagorski Declaration ¶¶ 36-37 and my points in paragraphs 9-10, *supra*), there is no statistical basis whatsoever for this conclusion.

## DR. ZAGORSKI'S SURVEY DESIGN AND METHODOLOGY

12. As an initial matter, the telephone survey methods used by Dr. Zagorski appear to be substantively identical to those employed by DecisionQuest. The primary difference between the two studies is that the DecisionQuest survey utilized samples of about 800 respondents per venue in four venues (Houston, Phoenix, Denver, and Atlanta), whereas Dr. Zagorski's samples included only 400 respondents in each of only two venues (Houston and Phoenix). All else being equal (which, as set forth below, is not the case), these facts alone establish that DecisionQuest's survey offers a more accurate view of sentiments in each community.

13. In my opinion, Dr. Zagorski's survey does not accurately test for biases against the specific defendants in this case, Jeffrey Skilling, Kenneth Lay, and Richard Causey. His questions contain so much information that each defendant's name is lost in a sea of extraneous facts including each defendant's former job title and a litany of the criminal charges against each – to the point that, by the time a respondent is asked to provide his or her opinion of guilt or innocence, the question essentially has become "do you think that an Enron executive (that is, any executive at all) is guilty of a bunch of crimes?" Compare, for example, Dr. Zagorski's questions concerning predisposition to find Mr. Skilling guilty to the equivalent predisposition questions used in DecisionQuest's survey:

## Table 2 – Comparison of Predisposition Questions

| Dr. Zagorski | DecisionQuest |
|---|---|
| [As you may know,] earlier this year, federal prosecutors indicted former Enron executives Richard Causey, Jeffrey Skilling, and Kenneth Lay on *charges that they falsified the company's financial statements and lied to auditors and investors.* Have you seen or heard anything about this case or are you unfamiliar with it? | The executives of Enron Corporation have been accused of mismanaging the company. The executives now face criminal charges and will be brought to trial. Please name all the former top executives you believe are guilty of crimes. |
| Jeffrey Skilling, the *former CEO of Enron*, is one of the defendants in the case. He is charged with *insider trading, securities fraud. wire fraud, conspiracy, and lying on Enron financial statements.* Based on what you have seen or heard about this case, do you believe that Jeffrey Skilling is . . . | What word or words come to mind when you hear the name Jeff Skilling? |

14. Given the overwhelming amount of information Dr. Zagorski provided, it is not

surprising that he found no statistically significant difference between the responses to these questions across the two venues when he looked only at the subset of his sample who were asked both questions. Common sense tells us that there should have been some differentiation between the data for Messrs. Lay, Skilling and Causey (Causey, of course, likely being less well known than the other two defendants) either within the two venues tested or between them. The fact that we see virtually *no* differentiation between the data implicitly confirms the flaw in Dr. Zagorski's survey design.

15. Dr. Zagorski also employed a closed-ended format for his guilt predisposition question (*i.e.*, he offered respondents the choices of "1-definitely guilty of the charges"; "2-probably guilty of the charges"; "3-probably not guilty of the charges"; "4-definitely not guilty of the charges"; and "5-or would you need more information to decide?"). As noted above in paragraph 6(c), use of a closed-ended question encourages guessing, which, when combined with a question that is loaded heavily with negative-sounding facts, will tend to lead people with no preformed opinion to say "guilty." Again, given the closed-ended structure of Dr. Zagorski's survey, it is not surprising that he found no statistically significant difference between the responses to these questions across the two venues when he looked only at the subset of his sample who were asked both questions.

16. Although an open-ended, non-leading question format does tend to suppress recall rates, and there is literature on both sides of the open-ended versus closed-ended format debate,

DecisionQuest greatly prefers the open-ended format to the format used by Dr. Zagorski for the following reasons:

- An open-ended format allows respondents to express their feelings or recollections in their own words, without undue influencing by the interviewer and without unduly restricting respondents' freedom of expression (thereby substantially minimizing the likelihood of guessing and eliminating the need to ask control questions like in Dr. Zagorski's survey);
- It more accurately indicates the respondents' familiarity with the issue at hand;
- It more accurately reflects what the respondents themselves find salient in the situation;
- It more accurately reflects the strength of the respondents' feelings about the issues at hand; and
- Research suggests that an open-response format can be more predictive of future behavior.

## RESPONSE TO DR. ZAGORSKI'S CRITIQUE

17. Importance of Findings in Response to Question 4. Dr. Zagorski misses the point of Question 4 of the DecisionQuest survey ("Please name all of the former top executives of Enron who you believe are guilty of crimes?") when he observes in paragraph 7 of his declaration that, in response to that question, "nearly nine out of ten people surveyed in Houston did not mention Jeffrey Skilling's name" and that "six out of ten people surveyed failed to specifically mention any Enron executive." DecisionQuest took a very conservative approach to its survey, designing its questions to minimize any aided or prompted recalls. As a result, DecisionQuest's survey may under-report bias in the venues it surveyed, but the bias results obtained have a high reliability rate.

a. Studies point to two relevant ways in which memories can be retrieved in the human mind: recall and recognition. A recall retrieval task asks the respondent to freely recall something, while a recognition retrieval task presents the respondent with a list of alternatives and asks him or her to select which are familiar.

b. Generally, the recall task is more difficult. For example, ask a 60-year-old how many people she can name from her high school graduating class and the list she produces will be relatively short, but usually accurate. Give her a list of all her former class mates, mixed in with fictitious distractor names, and she will recognize many more names than she could purely recall, but she is more likely to misidentify names as well.

c. We see this clearly demonstrated in a comparison of the DecisonQuest and Zagorski survey results. In the DecisionQuest survey, just under 40% of respondents in Houston were able to freely recall the name of a former Enron executive accurately, while in Dr. Zagorski's study, when provided with the names, over 90% reported familiarity with them.

d. As a result, it would be false to assume that DecisionQuest's data represents anything other than the tip of a very sizable iceberg in terms of revealing biases present in the Houston venue. As I explained in my original declaration, the fact that over 12% of Houston area residents identified the name "Jeff Skilling" when asked on an unaided and unprompted basis to

> "name all the former top executives of Enron who you believe are guilty of crimes" is remarkable, and demonstrates the unusual depth to which Enron's former executives' names have penetrated the consciousness of Houston residents. Most people would not be able to name *any* specific executives at a public company, let alone hold an opinion as to whether one or more of them is "guilty" of something. This straightforward proposition certainly is borne out by our data from Phoenix, Denver and Atlanta, where only 1%-3% of respondents could name Mr. Skilling.

18. Importance of Findings in Response to Question 5. In paragraph 10 of his declaration, Dr. Zagorski incorrectly characterizes the 30-40% negative association rate in response to Question 5 ("What words come to mind when you hear the name Jeff Skilling?") as evidence of a lack of prejudice. Again, his conclusion fails to take into account the difference between recall and recognition memory and between open-ended and close-ended response patterns. As was the case with Question 4, DecisionQuest's conservative approach attempted to reduce any tendency for interviewees to be influenced by the survey or the interviewers, but, as a result, the format did tend

to suppress responses. When interviewees are offered specific responses from which to choose, as in Dr. Zagorski's survey, response rates rise. As set forth above in Table 1, even after adjustments for potential guessing are made, Dr. Zagorski's data establish that nearly 58% of all jury-eligible residents in Houston already believe that Mr. Skilling and Mr. Lay are guilty. Dr. Zagorski's data are entirely in line with what one might expect based on the DecisionQuest data, taking into account the differences between the recall and recognition retrieval processes.

19. Recordation of Names of "Other Executives" in Response to Question 4. Dr. Zagorski likewise misapprehends how the DecisionQuest survey data apply to Mr. Skilling's co-defendants. Separate and apart from the manner in which we recorded data in the "Other Executives" category for Question 4 ("Please name all of the former top executives of Enron who you believe are guilty of crimes?"), Messrs. Lay and Causey are to be tried jointly with Mr. Skilling and are accused of conspiring with him. Our survey disclosed that Houston respondents were far more likely to identify Mr. Skilling as a "guilty Enron executive" than their counterparts in Phoenix, Denver and Atlanta – by a margin of 4-to-1. The same data that show Mr. Skilling cannot get a fair trial in Houston likewise demonstrate that his co-defendants cannot either. Furthermore, even without recording specific data as to Mr. Lay and Mr. Causey, the "Other Executives" data support the notion that neither they nor Mr. Skilling can get a fair trial in

Houston. The "Other Executives" data essentially measure the extent to which respondents believe former Enron executives generally are guilty and the depth of their knowledge on the topic (*i.e.*, an ability to name names). By this metric, Houstonians again dominated the survey, identifying more "guilty" executives by a 2-to-1 margin over their counterparts in Phoenix, Denver and Atlanta.

20. Wording and Sequencing of Question 4. At paragraph 9 of his declaration, Dr. Zagorski contends that the close proximity of Question 4 ("Please name all of the former top executives of Enron who you believe are guilty of crimes") to Question 5 ("What words come to mind when you hear the name Jeff Skilling?") is "leading," and creates an unfavorable association with the name Skilling which results in exaggerated negative views of the defendant. He is wrong on both points.

a. Initially, Dr. Zagorski mistakenly refers to the psychological process by which this supposed "leading" occurs as being "priming." His definition of the term "priming" is not one that any cognitive psychologist would accept, however. Priming, according to the Penguin Dictionary of Psychology, is "the triggering of specific memories by a particular cue." In other words, priming activates memory associations that *already exist* in the listener's mind. Priming does not involve, as Dr. Zagorski implies, the creation of associations where none previously existed.

b. To use Dr. Zagorski's own example: Leading with questions about George Foreman, then asking about Elizabeth Taylor, could indeed result in more respondents recalling that Ms. Taylor has product lines (at least among younger listeners less familiar with her film career). Such a result, however, does not in any way "lead" respondents to the understanding that Ms. Taylor has a product line (unless they already had such knowledge), nor does it make the association between Elizabeth Taylor and her product line any less true.

c. Of necessity, some amount of priming did occur in DecisionQuest's survey – and in Dr. Zagorski's survey as well. Both surveys, for example, begin with a reference to the indictments against former Enron officials. Such priming is essential, because it serves to orient the respondents to the subject(s) upon which they are about to be questioned.

d. What Dr. Zagorski likely had in mind when he accused DecisionQuest of priming is instead a false memory effect or related phenomenon, such as that studied extensively by Elizabeth Loftus. In other words, he seems to be suggesting DecisionQuest somehow "planted" an association in the survey respondents' minds that did not previously exist or distorted the associations that did exist. Even if that had occurred (which is not the case), the supposedly planted association would not likely affect the data. Most studies examining the false memory effect find that considerable time must elapse between the point at which a false association is first planted by a "leading" question and the time when the respondent retrieves the thusly distorted memory or association. A cursory review of the literature for purposes of preparing this declaration discloses that one of the shortest time frames involved to be 20 minutes. More commonly, the false memory effect is demonstrated after a period of days or weeks. Simply put, it takes time for an association to be planted and distorted in the listener's mind, much more time than the very few seconds that may have elapsed between Question 4 and Question 5 in the our survey.

e. Even if one assumes there was sufficient time for a false memory effect to take place, the fact remains that *Dr. Zagorski's survey* "planted" far more negative associations in connection with the defendants' names than did the DecisionQuest study. This is readily ascertainable from the information set forth in Table 2 in connection with paragraph 13, *supra*.

21. Importance of Findings in Response to Question 7. Once more, Dr. Zagorski misses the point when he argues at paragraph 12 of his declaration that the results of DecisionQuest's Question 7 ("In your opinion, was the economy of the [interviewee's venue] area affected more by the collapse of Enron than other cities in the United States?") are "not indicative of bias" but are instead "a statement of fact." Initially, this "criticism" is purely rhetorical – one does not have to be a social psychologist to know that facts very, very often engender an emotional or

psychological reaction and are highly relevant to understanding opinions. To answer Dr. Zagorski's charge directly, though: this question was intended to be, and is, a proxy measure for the degree to which respondents feel their local area was "victimized" by Enron's collapse. Nearly 70% of Houston-area respondents answered this question in the affirmative, whereas only 11% or less of the respondents in Phoenix, Denver and Atlanta did the same. That so many Houston residents report being more or less directly affected by the Enron matter, particularly when so few residents of other venues do, suggests quite plainly that Houston residents feel they were disproportionately affected by Enron's collapse. It stretches reason to believe that, in such a social climate, Houston area residents would be able to objectively determine the guilt of the men who are accused of causing, and are widely believed to have caused, that highly significant local event to occur.

22. Stealth Juror Study. Finally, Dr. Zagorski correctly describes the DecisionQuest survey of practicing trial attorneys as being "anecdotal." That having been said, that fact does not make the existence of stealth jurors any less true or the perceptions of several dozen experienced trial lawyers less valid. But, more importantly, Dr. Zagorski does not dispute the related point derived from the larger DecisionQuest study of jury-eligible citizens, wherein we found that 14% of the respondents freely admitted they might conceal information about themselves in order to obtain a place on a

jury in a high profile trial. From a social psychological point of view, if so many potential jurors freely admit the socially undesirable intention to subvert the jury process, many more may actually feel that way but are too cautious to admit it to a stranger on the telephone. This is another "tip of the iceberg" that could present a considerable threat to any defendant's rights in a high profile case such as this.

## RESPONSE TO OTHER CRITICISMS OF DECISIONQUEST'S SURVEY

23. Finally, the Task Force raises several methodological issues in their Opposition brief that are not supported by any testimony from Dr. Zagorski. Although that fact alone speaks volumes about the impropriety of such criticisms, I nevertheless deal with them here.

24. "Storm of Publicity" Argument. The Task Force asserts at footnote 17 on page 37 of its brief that respondents in venues other than Houston will harbor the same biases at trial "after the storm of publicity that would accompany a transfer" occurs. No basis exists for this unsubstantiated conclusion. While there might be a short-lived burst of coverage in the transferee venue, neither Phoenix, Denver, Atlanta, nor any other venue has the same long history or substantial affinity with Enron that Houston does. In other words, because Enron was not located in those other areas, and the people there are many times less likely to believe that they know someone harmed by Enron's collapse or that their local economy was

particularly harmed by the collapse, the media coverage accompanying a venue transfer will lack salience to them and are likely to recede from their consciousness. In stark contrast, because Enron's collapse and the prosecution of Messrs. Skilling, Lay and Causey have great salience to residents of Houston, the publicity accompanying a trial here will only further reinforce and amplify the biases our study found to exist. Furthermore, studies have shown that opinions held for a longer period of time are more difficult to change than opinions held over a shorter period of time. Houston residents have been exposed to Enron and negative media reports about Enron for a longer period of time than any of their counterparts in alternative venues; as a result, even if there is a temporary bump in coverage or bias in a transferee venue, whatever prejudicial effects there may be can be more easily undone at trial.

25. Asking a "Fair and Impartial" Question. The Task Force also asserts at page 37 of its brief that DecisionQuest's study should have asked whether "respondents would be able to set aside any initial negative sentiment in order to serve as a fair and impartial juror." This assertion is patently meritless. Not only does Dr. Zagorski not endorse this criticism in his declaration, the design of his study affirmatively *refutes* it – nowhere does he ask this type of question either. Such a question is not appropriate for a venue survey because (a) it is leading in that it suggests to the respondents that the interviewer would "prefer" to have them say "yes" (which is clearly

the socially desirable response); (b) most people are unaware of their latent biases so they might answer "yes" to the question but, in truth, they would still harbor significant animosity towards the defendants; and (c) the data collected by DecisionQuest's survey indicates that, even for those persons who are actually aware of their Enron-related biases, their "sense of justice" might permit them to answer "yes" to the Task Force's hypothetical question while nevertheless believing that the only "fair" verdict in this case would be a guilty verdict. For these reasons, among others, generally accepted survey principles do not permit the use of such a question. *See, e.g., Guidelines for Survey Research in Connection with Motions to Change Venue* (updated 2002), re-adopted and republished in American Society of Trial Consultants, *Code of Professional Standards* (2003).

26. Moreover, as I have testified previously, based on my experience as a trial consultant and jury researcher, jurors with a subconscious bias (such as those who have used strong negative words to describe Mr. Skilling or Mr. Lay) may believe that they can be fair, but, when probed in settings outside of the courtroom context (such as in post-trial interviews or jury research settings), they reveal that no amount of evidence would have changed the preconceived notions with which they entered the courtroom.

27. Counting of "Negative" Responses to Question 5. At footnote 19 of page 38 of its brief, the Task Force argues that 11 responses to

Question 5 ("What words come to mind when you hear the name Jeff Skilling?") are not "negative" enough to give rise to the inference that the respondents are biased against Mr. Skilling. Even a cursory evaluation of the responses at issue reveals that they do, in fact, express decidedly negative views about Mr. Skilling's person, character or credibility. Based on my experience and training, it is my opinion that such responses are indicative of an underlying bias against Mr. Skilling that will significantly inhibit his ability to receive a fair trial. Again, Dr. Zagorski appears to agree with me; among other things, his declaration takes no issue with DecisionQuest's tabulation of the negative responses. *See* Zagorski Decl. ¶ 10 (citing our conclusion that "249 of 773 Houston respondents, or 32%[,] of Houston-area residents used negative words").

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 19, 2004 in Torrance, California.

s/Philip K. Anthony
Philip K. Anthony

# APPENDIX J

# SUPPLEMENTAL DECLARATION OF RUSSELL SCOTT ARMSTRONG

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

|  |  |  |
|---|---|---|
| UNITED STATES OF AMERICA, | ) | Crim. No. H-04-25 |
|  | ) | (Lake, J.) |
|  | ) |  |
| Plaintiff, | ) |  |
|  | ) |  |
| v. | ) |  |
|  | ) |  |
| JEFFREY K. SKILLING and RICHARD A. CAUSEY, and KENNETH LAY, | ) |  |
|  | ) |  |
| Defendants. | ) |  |

## SUPPLEMENTAL DECLARATION OF RUSSELL SCOTT ARMSTRONG IN SUPPORT OF DEFENDANT JEFFREY K. SKILLING'S MOTION TO TRANSFER VENUE

## I.
## INTRODUCTION

### A. Nature of Report

28. I submit this supplemental declaration in support of defendant Jeffrey K. Skilling's motion to transfer venue.[1]

29. For this supplemental declaration, I have been asked to: (a) critique the media analysis conducted by Dr. David A. Zagorski in support of the Enron Task Force's opposition and the Task Force's opposition itself; (b) analyze the media coverage of Enron, Skilling, and Lay since the beginning of November 2004; and (c) compare Houston's coverage of Enron's collapse and the perceived culprits -- Skilling and Lay -- to Oklahoma's coverage of the 1995 bombing of the Alfred P. Murrah Federal Courthouse and the perceived culprits -- Timothy McVeigh and Terry Nichols.[2]

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[1] For purposes of clarity, I refer to (a) my initial declaration/report as "Armstrong Decl.", (b) the exhibits attached thereto as "Armstrong Exs.", (c) this declaration/report as "Armstrong Supp. Decl.", (d) the exhibits attached to David Marroso's (initial) Declaration as "Marroso Exs." and (e) the exhibits attached to Marroso's Supplemental Declaration as "Marroso Supp. Exs."

[2] As explained below, I testified as an expert on behalf of defendants Timothy McVeigh and Terry Nichols in their motion to transfer the criminal prosecution from Oklahoma to Denver, Colorado.

### B. Materials Surveyed

30. To complete these tasks, I conducted an extensive and comprehensive review of the available news media coverage and publicity (by newspapers, network affiliated broadcast television stations, dominant local websites, and other assorted local media) of Enron-related issues in Houston, Atlanta, Denver, and Phoenix from November 1, 2004 through approximately December 10, 2004. For further context, I also reviewed the coverage of "national newspapers of record" -- the New York Times, the Wall Street Journal, and the Washington Post -- and the coverage of the four major television broadcast networks' evening news broadcasts with respect to the same issues for the same period.

31. I also reviewed the Enron Task Force's opposition to Skilling's motion to transfer venue, as well as the supporting declaration of David A. Zagorski ("Zagorski Declaration").

32. Lastly, I reviewed my testimony from the hearing on defendants' motion to transfer venue in *United States v. McVeigh et al.*, CR-95-110-MH, United States District Court for the Western District of Oklahoma, January 31, 1996, the Honorable Richard P. Matsch, presiding.[3]

### C. General Conclusions

33. My general conclusions are summarized below and are explained in further detail in the subsequent sections.

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[3] Marroso Supp. Exs. 2, 3.

34. The Task Force's Media Analysis Is Deficient in Critical Respects.

a. Neither the Task Force nor Dr. Zagorski addresses any of the conclusions articulated in my initial report. Instead, the Task Force, through Dr. Zagorski, conducted a truncated analysis of a small subset of data. Dr. Zagorski reviewed less than 10% of the relevant newspaper materials, overlooked newspaper coverage from Atlanta, Denver, and Phoenix, and ignored from all venues the powerful media sources of television and the internet.[4]

b. Relying on a restricted universe of data led the Task Force to make demonstrably inaccurate arguments. For instance, based on Dr. Zagorski's statistical review of exhibits, the Task Force maintains that, while publicity surrounding Enron and these defendants was at a fevered pitch in 2002, it has become back-page news, if newsworthy at all, in 2004.[5] Although 2002 was the peak coverage year everywhere in the country, even in

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[4] Armstrong Decl. ¶¶ 8, 37-40, 43-44.

[5] Enron Task Force Opposition ("Opp.") at 32 ("Likewise, defendant Skilling's handpicked collection of the most objectionable media coverage indicates that more than two years have passed since the peak of the alleged vitriol against Skilling.").

2004, the Houston media dedicated enormous resources to covering Enron and these defendants. In 2004 alone, Houston newspapers and periodicals ran hundreds of Enron-related articles, a large percentage of which linked people, events, and other general information to the investigation and upcoming trial of Skilling, Lay, and Causey. Unlike their counterparts in the other venues surveyed, the Houston television news media have continued to broadcast extended news segments about Skilling and Lay, regularly using evocative features, such as interviewing former employees and utilizing footage of Skilling's "perp walk."[6]

c. The Task Force's media examination by Dr. Zagorski failed to conduct qualitative examination of the local news media coverage Depth, intensity, tone, prominence of coverage, and the presence of recurring themes -- the heart of the media analysis -- are ignored entirely.[7]

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[6] Armstrong Decl. ¶¶ 28, 54, 59, 64, 82.

[7] Dr. Zagorski's quantitative analysis is also inaccurate. For example, a review of the exhibits reveals that Skilling's name is mentioned in 10% more articles than claimed by Dr. Zagorski. *Compare* Zagorski Decl. ¶ 14 (Skilling's name mentioned in 110 exhibits) *with* Armstrong Supp. Decl. ¶ 16 (Skilling's name mentioned in 139 exhibits), *infra*; Marroso Supp. Ex. 73.

35. Recent Media Coverage Exhibits Trends Similar to Trends From Earlier Periods.

a. Since November 2004, media coverage of two developments -- the verdict and sentencing phase in the Nigerian Barges trial and the investigation into Lay's wife Linda -- reaffirm the conclusions articulated in my initial report. Quantitatively and qualitatively, the Houston media covers the Enron scandal in a manner that sets the stage for the upcoming Skilling/Lay/Causey trial in a markedly different manner than its counterparts in Atlanta, Denver, and Phoenix and in the national media.

b. The Houston community continues to be focused on the Enron story, particularly how any revelation, such as the acquittal of Barges defendant Sheila Kahanek or the announcement that the Task Force is investigating Linda Lay for insider trading, will affect the upcoming trial of Skilling and Lay. As it has done for the past 36 months, the Houston media responded to the needs of the community by dedicating an extraordinary amount of resources and churning out an impressive number of highly detailed, often emotionally charged stories that individually and collectively reveal powerful "us vs. them," "justice," and "closure" themes, generally unique to Houston.

36. The Similarities Between Coverage of Enron and the Oklahoma City Bombing.

a. The Task Force's characterization notwithstanding, neither Skilling's motion nor my analysis claimed that inflammatory pretrial publicity alone poisoned the Houston community against these defendants. It was the collapse of Enron itself that profoundly affected the Houston community unlike any other venue.

b. The Houston media responded to the traumatized community's need for information through "civic journalism" -- listening to the community's needs and feelings and reassuring the community that everything will return to normal once the perceived culprits are brought to justice. Rather than "cause" the community prejudice, the Houston media reflects, and reinforces, and amplifies the pre-existing, deep-seated animus.

c. Undeniably, there was violence attending the bombing of the Alfred P. Murrah Federal Courthouse in 1995 that simply does not exist from the collapse of a company. However, demonstrating just how intensely

> Enron, Skilling, and Lay affected Houston, the Houston media's civic journalistic response to the fallen energy giant in many respects mirrors the Oklahoma media's response to the Oklahoma City bombing. Similarities include: (a) treating the story as a predominately local tragedy; (b) allocating extraordinary resources; (c) focusing on the tragedy and triumph of victims; (d) juxtaposing the plight of victims with the demonization of the perceived culprits; (e) extolling civic pride in overcoming tragedy; (f) asserting impartiality; and (g) constantly progressing down the road to justice.

## II.

## THE TASK FORCE'S MEDIA ANALYSIS IS DEFICIENT AND MISLEADING

37. In my initial report, I analyzed quantitative and qualitative aspects of the Houston media's coverage of Enron-related events, people, and themes, as compared to the coverage of those same topics by the national media and by the local media in Atlanta, Denver, and Phoenix. Broadly speaking, I concluded that the Houston media has dedicated and continues to dedicate more resources than the national media or the local media in the other venues to the Enron story, especially to the investigation and upcoming trial of Skilling, Lay,

and Causey.[8] With more resources devoted, the Houston media covered these storylines significantly more often, in substantially more detail, and with considerably more intensity than either the national media or any of the local media in other venues surveyed.[9] The Houston media was unique among the venues studied in emphasizing and repeating themes designed to reassure its community that the Enron Task Force is methodically investigating criminal conduct at Enron and is progressing through the ranks of lower-level Enron executives toward the successful prosecution of those perceived to be the most responsible for the trauma inflicted on the community -- Jeffrey Skilling and Kenneth Lay.[10]

38. These conclusions are not based on any one or group of inflammatory articles, columns, or broadcasts, although there are prominent examples of such coverage.[11] Rather, my findings are based on the: (a) entirety and progression of media coverage from late 2001 through the present[12]; (b) depth and intensity of coverage in Houston compared to the other venues studied[13]; (c) frequent, repeated use in Houston, much more than in other venues, of the

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[8] Armstrong Decl. ¶¶ 23-28.

[9] Armstrong Decl. ¶¶ 30-35, 53-84.

[10] Armstrong Decl. at ¶ 51.

[11] A representative, but not exhaustive set of inflammatory columns and broadcasts were attached as exhibits to my initial report and to the declaration of David Marroso. *See, e.g.*, Armstrong Ex. 26; Marroso Exs. ¶¶ 35, 37, 60, 196, 197, 290 293, 294.

[12] Armstrong Decl. ¶ 8.

[13] Armstrong Decl. ¶¶ 51-63.

human interest element both *as* the story and as *part of* other stories[14]; (d) recurrent juxtaposition of the victims of Enron with the perceived "villains," particularly Skilling, Lay, and Fastow (now convicted)[15]; (e) existence in Houston, although seen to a lesser degree in the other venues, of the "Enron metaphor," where accusations of fraud and deception are logically and linguistically linked to these defendants' assumed illegal actions[16]; and, importantly, (f) themes, unique to Houston, of consistently and actively encouraging a community-wide expectation that a careful and diligent prosecutorial effort is not only underway, but will also result in convictions of Skilling and Lay in order to bring closure to the aggrieved Houston community.[17]

39. I have reviewed the Enron Task Force's opposition to Skilling's motion to transfer venue and the declaration of David A. Zagorski, Ph.D. in support thereof.[18] As explained below, Dr. Zagorski's examination is flawed in several important respects and many of the Task Force's arguments based on Dr. Zagorski's analysis are demonstrably incorrect.

40. Dr. Zagorski reviewed the 297 articles submitted as exhibits to the Marroso Declaration.[19]

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[14] Armstrong Decl. ¶¶ 67-73.

[15] Armstrong Decl. ¶¶ 74-76, 78-80.

[16] Marroso Exs. 60, 61.

[17] Armstrong Decl. ¶¶ 13, 64, 80-84, 90-91.

[18] My critique of Dr. Zagorski's declaration and the Task Force's opposition is limited to media issues.

[19] Zagorski Decl. ¶ 13 ("Under my supervision and direction, members of the Dimitrius and Associates staff

However, the attached exhibits were only those "newspaper articles cited in the memorandum in support of Defendant Jeffrey Skilling's motion to transfer venue."[20] Dr. Zagorski reviewed *less than one-tenth* of the Houston newspaper articles I reviewed in connection with my initial report.[21] Furthermore, Dr. Zagorski did not examine any articles from national publications of record, nor any articles from the dominant newspapers in Atlanta, Denver, or Phoenix. Therefore, neither he nor the Task Force has a proper basis for making a comparative media analysis.

41. Dr. Zagorski's declaration does not address either quantitatively or qualitatively the local television news media coverage.[22] Television is a powerful medium for reflecting and expressing editorial and community judgments. Houston's television coverage of Enron and these defendants is

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analyzed the 297 exhibits and made the following findings."); Opp. at 29-34 ("A careful review of the exhibits, however, reveals that the vast majority of the significant press coverage of this and other Enron cases has been objective, factual, and has contained no mention of the defendants by name.").

[20] Marroso Decl. at 2 (emphasis added).

[21] My initial declaration and the graphs included therein advert to massive amount of material I reviewed. *See* Armstrong Decl. ¶¶ 8, 37. For example, from the Houston Chronicle alone, I reviewed more than 3,000 articles mentioning "Enron" and/or "Skilling." All articles reviewed from the dominant newspapers are publicly available on LEXIS/NEXIS. It is my understanding that the Task Force requested from Skilling additional information regarding polling but did not request an elaboration of the materials I reviewed.

[22] Armstrong Exs. 19, 20, 20A, 26.

no exception. Compared to local television news coverage in the other venues examined, Houston's television media (a) put more live coverage on the air; (b) conduct more interviews with experts and commentators; (c) cover more press conferences; (d) produce more individual news segments within a single news show; (e) updates information more regularly; (f) produce and use more "teasers" to lead viewers into segments across news time slots; (g) creates more custom graphics and special effects; and (h) employs more file footage, such as footage of defendants' "perp walks" to make segments blend better and capture viewer attention.[23] Dr. Zagorski and the Task Force ignore these points from my initial report. They also fail to mention the hundreds of pages of abstracts from television news broadcasts attached as exhibits to my report.[24] In today's culture, it is impossible to conduct a media analysis without considering the pervasive impact of local television news.

42. Dr. Zagorski's review is incomplete in another manner. For the materials he did review, Dr. Zagorski offers no qualitative analysis. Dr. Zagorski provided numerical counts for the number articles in each periodical, the number of articles on the front-page vs. other sections, and the number of articles per year. However, he did not consider the depth and intensity of coverage, prominence of display, or consistency of story themes -- the

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[23] Armstrong Decl. ¶¶ 33-35.

[24] Armstrong Exs. 19, 20, 20A, 26. Nor does Dr. Zagorski or the Task Force address the recent television news broadcast submitted to the court in DVD format.

hallmarks of qualitative media analysis[25] The following essential qualitative points from my initial report are ignored:

a. "Not only has the Chronicle run more articles about Enron, Skilling, Lay, and Causey, its articles are more detailed than the stories in the Arizona Republic, Rocky Mountain News, Denver Post, and Atlanta Journal-Constitution. The same is true for Houston's television news coverage compared to that of the other venues."[26]

b. "When stations in Atlanta, Denver, and Phoenix run segments on Enron or one of Enron's executives, the segment generally is cursory and provides nowhere near the level of detail provided by Houston stations."[27]

c. The Houston media regularly reports on aspects of Enron related criminal trials that the media in other venues rarely touch, such as names of judges, hometowns of counsel for Enron defendants, particularly when non-Texans, names of transactions alleged to be fraudulent, names of witnesses and defendants in related matters. "In isolation, these details could be innocuous, but as is the case in extraordinary events which reach everyone in the community, such as the bombing of the Oklahoma City federal building, the sheer repetition of details, as well as their interconnectedness with one another, creates the impression that the Houston Community is receiving an 'authoritative account' unlike that to which they are normally accustomed from reading coverage of other topics, and unlike that to which readers in Atlanta, Denver, and Phoenix are accustomed with respect to the criminal trial of these Enron executives."[28]

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[25] Zagorski Decl. ¶¶ 13-19.

[26] Armstrong Decl. ¶ 58.

[27] Armstrong Decl. ¶ 59.

d. "One of the most important qualitative components -- and one of the biggest disparities between the Houston media and the media of Atlanta, Denver, and Phoenix -- concerns repetitious story themes"[29]

e. "No surveyed media outside of Houston ran anything remotely like" the human interest victimization pieces run in Houston, some of which are cited in my report.[30]

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[28] Armstrong Decl. ¶ 61-62.

[29] Armstrong Decl. ¶ 63-66.

[30] Armstrong Decl. ¶ 73.

f. "Partnered with its overriding focus on victims of Enron's 'fall' is the Houston news media's tendency to incorporate pejorative and negative words when reporting about former Enron executives, especially Lay and Skilling, and its willingness to characterize prosecution witnesses using favorable terminology. This occurs to a much greater degree in Houston than in the other venues."[31]

g. "Media in Atlanta, Denver, and Phoenix were far less likely to juxtapose the plight of perceived victims with the wealth of Enron's former executives."[32]

h. "Through prominent story placement, concentrated reporting on events and people in elaborate detail, and consistently repeating certain thematic portrayals of events and their current status, the local Houston news media reassures the Houston community that the prosecutorial Task Force is methodically investigating criminal conduct at Enron and is progressing up the line toward the successful prosecution of those most responsible for the trauma inflicted on the

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[31] Armstrong Decl. ¶ 74.

[32] Armstrong Decl. ¶ 79.

> community by Enron -- Jeff Skilling and Ken Lay."[33]

43. Several of Dr. Zagorski's quantitative conclusions are inaccurate or, when accurate, actually support Skilling's motion.

   a. For example, Dr. Zagorski points out that 27 of exhibits attached to the Marroso declaration are editorials, opinion based columns, or letters to the editor, suggesting that these sorts of "non-straight news" pieces are unimportant to media analyses.[34] To the contrary, editorials, opinion-based columns, and letters to the editor are particularly relevant to media analyses, especially in a case like this one, because they demonstrate a "feedback loop" where local media, exercising civic journalism (described below), simultaneously reflects, reinforces, and amplifies deeply-embedded feelings of its readers and viewers.[35]

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[33] Armstrong Decl. ¶ 51.

[34] Zagorski Decl. ¶¶ 18(b), (c).

[35] Armstrong Decl. ¶9(c) ("My analysis ... describes how local news media provide a 'feedback loop,' in which the local media's perceptions of the community's values and interests are developed and communicated back to the community, reabsorbed and evaluated by the local media through letters to the editor, opinion commentaries, cyber equivalents such as 'blogs,' and media interviews of community leaders and individuals, and then re-published and re-broadcast to the

b. Similarly, Dr. Zagorski observes that "[i]n many cases, the citations contain only one- or two- word mentions of Enron, often as part of a simile," intimating that these references carry little weight in a motion to transfer venue.[36] To the contrary, these metaphors demonstrate the extent to which in Houston Skilling is synonymous with fraud. In Houston, for example, sports readers are assumed to "know" that Skilling, the former CEO of a local corporation, is a liar.[37]

c. Dr. Zagorski asserts that "Skilling is mentioned by name in approximately one-third of the exhibits (110 out of 297, or 37%) and Lay and Causey are mentioned in even less (98, or 33% for Lay and 29, or 10% for Causey)."[38] This count is wrong. At my direction,

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community. This cycle clarifies, amplifies and reinforces community values and interests.").

[36] Zagorski Decl. ¶ 18(f) (citing Marroso Exs. 60-68).

[37] Marroso Ex. 60 ("If statistics do indeed lie, as the old adage tells us, then Shaquille O'Neal's are like former Enron CEO Jeff Skilling in front of a congressional subcommittee. They tell a good story. They sound convincing—25.7 points, 8.7 rebounds and 60 percent shooting from the field. But that's not the whole story."); 61 ("If you believe the story about the coach not having anything to do with the end of Emmitt Smith's Cowboys career, then you probably believe in other far-fetched concepts. Like Jeff Skilling having nothing to do with Enron's collapse.").

[38] Zagorski Decl. ¶ 14.

members of Skilling's defense team reviewed each of the 297 articles to determine in how many articles each defendant's name was mentioned. Dr. Zagorski understated the count for Skilling and Lay. The table below summarizes the results:

| | # Mentions (Task Force count) | # Mentions (Skilling count) |
|---|---|---|
| Skilling | 110<br>(37%) | 139<br>(47%) |
| Lay | 98<br>(33%) | 134<br>(46%) |
| Causey | 29<br>(10%) | 36<br>(12%) |

d. In any event, as identified in my initial report, between 2001 and October 15, 2004, "435 articles discussing Mr. Skilling appeared in the Chronicle, more than 4 times the number of such articles appearing in the 4 other papers combined..."[39] In my professional experience, I cannot recall a situation where a corporate executive's name was reported more often and more negatively than Jeff Skilling by local news media.

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[39] Armstrong Decl. ¶ 32 (emphasis in original); Armstrong Ex. 14.

e. On at least two occasions, the Task Force asserts that national coverage of Enron parallels Houston's coverage, concluding that everyone everywhere has been exposed to the same level of pre-trial publicity.[40] As explained in my initial report: "National newspapers, such as the New York Times, the Wall Street Journal, and, to a lesser degree, the Washington Post, have covered the financial, industrial, political, and criminal aspects of the Enron story, but not at all to the same degree or with the same emphasis as the Houston media... [However,] because the local Houston news media see Enron differently -- as *their* local story -- they have emerged in a singular class when it came to dedicating resources and attention to Enron coverage."[41]

44. The Task Force asserts that not enough Houstonians read the Chronicle to support a venue transfer. "Even with [its] larger circulation ... less than 40% of adults in the Houston area read the Houston Chronicle daily and less than 50% read the

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[40] Opp. at 17 ("Such factual patterns have no relationship to the case at bar, which involves primarily securities fraud and mail fraud charges and attendant publicity on a national basis."); 40 ("The fact that defendants' preferred city reflects relatively high levels of awareness of the case confirms the nationwide nature of the media coverage.").

[41] Armstrong Decl. ¶ 23, 25 (emphasis in original).

Sunday edition."[42] No paper in any city has a 100% circulation rate. A 40% daily circulation rate and a 50% Sunday circulation rate are significant in a geographically vast area like the Houston division. In comparison, the major paper in Atlanta, the Atlanta-Journal Constitution, has a 40% daily circulation rate and a 58% Sunday circulation rate; the dominant papers in Denver, the Rocky Mountain News and the Denver Post, collectively have a 49% daily circulation rate and a 63% Sunday circulation rate; and the leading paper in Phoenix, the Arizona Republic, has a 38% daily circulation rate and a 48% Sunday circulation rate. As a further point of comparison, in 1999 (the earliest figure available), the Daily Oklahoman, the dominant local newspaper in Oklahoma City, the venue from which the McVeigh/Nichols prosecution was transferred, had a 30% daily circulation rate and a 45% Sunday circulation rate.[43]

**Comparison of Circulation Rates**

| | Daily Circulation | Sunday Circulation |
|---|---|---|
| Houston Chronicle | 40% | 50% |
| Atlanta Journal-Constitution | 40% | 58% |
| Denver Post<br>Rocky Mountain News (combined) | 49% | 63% |

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[42] Opp. at 30-31; Zagorski Decl. ¶ 16.

[43] Marroso Supp. Ex. 4.

| | | |
|---|---|---|
| Arizona Republic | 38% | 48% |
| Daily Oklahoman (1999) | 30% | 45% |

45. Furthermore, on every significant demographic measure, the Chronicle's readership is virtually indistinguishable from the eligible members of the Houston venire.[44]

**46.** Equally important, the Chronicle's role as the dominant news source is based not only on the number of people it reaches directly on a daily or weekly basis but also on the fact that its editorial themes dominate television coverage and are thus conveyed throughout the community through a different, popular media source. As explained in my initial report, the primary television stations in Houston -- KTRK (ABC), KHOU (CBS), KPRC (NBC), KRIV (Fox), and Hou24-NS24 (Independent) -- reach 95% of the venue's geographic area, and the market share numbers demonstrate that hundreds of thousands of people view the stations' news programs daily.[45] With live coverage, interviews of experts and commentators, press conferences, custom graphics and special effects, use and reuse of file footage (*e.g.*, Skilling's "perp walk"), and greater use of "teases," television is an extremely powerful medium for reflecting and reinforcing community sentiment.

**47.** Moreover, newspaper circulation ignores the internet:

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[44] Marroso Supp. Ex. 5.

[45] Armstrong Decl. ¶¶ 16-17; Armstrong Exs. 6, 15.

a. SPECIAL REPORT: ENRON, the Chronicle's website dedicated to Enron, is the most intensive and sophisticated interactive media tool focused on a single company or event that I have ever seen produced by a news media organization. While people from across the globe have equal access to this medium, Houstonians are especially likely to have visited. According to the Chronicle's own statistics, nearly 750,000 Houstonians visit www.chron.com per month.[46]

b. Robert Jordan, co-founder of International Demographics, Inc., parent company of The Media Audit, cites the Houston Chronicle as an example of a newspaper that has substantially increased its reach in the community through its website: "[T]he Houston Chronicle reaches 45.0 percent of the adult population during an average week. If you add their Web site, HoustonChronicle.com to the reach of the printed edition and eliminate the duplication between the two, the net reach of the paper is 52.1 percent, which is a net gain of 7.1 percentage

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[46] Marroso Supp. Ex. 5 ("1,954,400 Houston adults were on line in the past month … HoustonChronicle.com is the leading local Web site for reaching Houston adults online, delivering an impressive 38% of Houston's online adult audience each month.").

> points of all adults in the Houston Consolidated SMSA."[47]

48. The Task Force asserts that "[n]one of the defendants has proffered data demonstrating that a significant number of potential jurors from the Houston division glanced at these articles and websites, much less read them and retained those characterized by the defense as inflammatory... See United States v. Ricardo, 619 F.2d 1124, 1131, 1132 (5th Cir. 1980) (failure to adduce newspaper circulation statistics instrumental in court's rejection of appellant's pre-trial publicity claims)."[48] However, Section II of my initial report, entitled "Demographics," among other things, identified the dominant newspapers and television stations in each venue surveyed and concluded that "these media collectively serve the geographic area in which vast majority of the residents of the selected counties [live]."[49] Exhibit 15 attached to my report provided the supporting data for this claim, including circulation numbers (based on the Audit Bureau of Circulation, the same source utilized by the Task Force) for each newspaper and rating and market share data for each television station.[50]

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[47] Marroso Supp. Ex. 6.

[48] Opp. at 30-31.

[49] Armstrong Decl. ¶¶ 16-17.

[50] Armstrong Ex. 15.

## III. RECENT MEDIA DEVELOPMENTS

49. In the month and a half since Skilling filed his motion to transfer venue, I have observed two developments, the coverage of which supports the conclusions articulated in my initial report. Those developments are: (1) the verdict and sentencing phase of the Barges trial; (2) prosecutorial efforts to collect additional testimonial evidence against Skilling, Lay, and Causey.

### A. The Nigerian Barges Verdict and Sentencing

50. The jury in the case of *United States v. Bayly et al.* ("the Nigerian Barges case") announced its verdict in the afternoon of November 3, 2004. The jury convicted four Merrill Lynch bankers and one Enron executive, and acquitted Enron accountant Sheila Kahanek.

51. Between November 3, 2004 and November 12, 2004, the Chronicle ran at least ten stories about the Barges trial, an average of more than one story per day. Each story concerned the sentencing phase for the five convicted defendants, the acquitted defendant, or a combination of both.[51]

52. Coverage in local news media elsewhere was dramatically different. In the Atlanta Journal Constitution, the jury's verdict was relegated to a one-paragraph summary in the November 4, 2004 edition and a one sentence passing reference in the

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[51] Marroso Supp. Exs. 13, 14, 16-26.

next day's paper.[52] The Arizona Republic ran one story about the Barges verdict (headline corrected the next day) and no other coverage at all.[53] Of Denver's two prominent papers, only the Rocky Mountain News covered the Barges verdict, and it did so through a single wire story collected from Associated Press.[54]

53. National coverage was similarly sparse. The Wall Street Journal ran one story about the Barges verdict and one story about the sentencing phase.[55] The Washington Post ran one story and one paragraph about the verdict in a "week's end" edition, and a passing reference to the sentencing phase in an article summarizing weekly financial news.[56] The New York Times ran one article about the Barges verdict, but did not cover the sentencing phase at all.[57]

54. The Chronicle's 10 stories are a microcosm of the Chronicle's Enron coverage generally, both quantitatively and qualitatively. The qualitative components so pervasive in Houston are not present, or are present only to a minor degree, in the other media surveyed. For example:

a. Intense Level of Detail: Unlike its newspaper counterparts, the Chronicle reported every detail of the Barges verdict and sentencing. This included, among other things, (a) ages, hometowns, and job histories for all defendants; (b) names, theories, and testimony of the defense and government's economic experts who testified in the sentencing phase; (c) reporting on stalled sentencing deliberations due to one juror's stomach flu; and (d) an expose on Kahanek's lead trial lawyer, including the fact that his normal heart rate more than doubled as the jury's verdict was announced.[58]

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[52] Marroso Supp. Exs. 44, 45.

[53] Marroso Supp. Ex. 46.

[54] Marroso Supp. Ex. 47.

[55] Marroso Supp. Exs. 54, 55.

[56] Marroso Supp. Exs. 48-50.

[57] Marroso Supp. Ex. 65.

b. Hometown Mentality: Referring to Kahanek's lawyer, the Chronicle wrote: "This flamboyant gunslinger of a Texas criminal defense lawyer stood out among the mostly New York defense lawyers in the first Enron criminal trial... Those New York lawyers were full of praise for Cogdell, one of them describing his closing argument on Kahanek's behalf as 'intense, emotional,' and adding 'He's a *re-a-lly* good lawyer'"[59] On November 15, 2004, the Texas Lawyer, a state-wide periodical, ran an article about Kahanek and her defense lawyer entitled "Self Defense: Enron Defendant

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[58] Marroso Supp. Exs. 19, 23-25.

[59] Marroso Supp. Ex. 40.

Worked Alongside Attorneys to Win Acquittal." The article included an email from one of the Barges jurors to Kahanek's lawyer epitomizing the pervasive "us vs. them" mentality: "You and Sheila left those NY lawyers choking in your dust. They probably scratched their heads over that one while telling everyone how stupid we are down here in Texas."[60]

c. Road to Justice: Some of the Chronicle's articles tied the Barges verdict and sentencing directly or indirectly to the investigation and upcoming trial of Skilling and Lay. One article, quoting experts, observed that "[t]he [Barges] case was a test of Enron Task Force's prosecutors' accusations of earnings manipulations, alleged repeatedly in the bigger upcoming case against ex-Enron Chairman Ken Lay and ex-CEO Jeff Skilling. But the government was not invincible, and legal experts think the case has many lessons for the 11 people awaiting trial on Enron-related criminal charges... Jacob Frenkel, a former federal prosecutor in the Washington D.C.-area who has been following the case, sees this as a big win for the prosecution despite the acquittal of Kahanek. 'Guilty pleas don't test the government.

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[60] Marroso Supp. Ex. 76.

This was a preview to how this kind of evidence will play in the bigger cases,' he said... Mike Ramsey, attorney for Lay, said he thinks this trial has little to do with his client."[61] Another article pointed out that "Kahanek wasn't one of Enron's elite, nor did she cross paths with those at the top -- company founder Kenneth Lay and former CEO Jeffrey Skilling."[62] Of the national and local newspapers surveyed, only one -- The Washington Post -- linked the Barges trial, verdict, and sentencing to defendants' upcoming trial.[63]

d. Community's Need for Closure: On November 10, 2004, the day after the jury had completed its sentencing recommendations, the Chronicle reported that 9 jurors, who had questions "about the process," went to the courthouse offices of the Enron Task Force seeking what the jury foreperson described as "closure."[64] It was left unclear to what "process" the jury foreperson referred, what she meant by "closure," or why 9 jurors felt it necessary to visit the prosecutors to get it. The suggestion remains that jurors, who heard testimony that

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[61] Marroso Supp. Ex. 25.

[62] Marroso Supp. Ex. 13.

[63] Marroso Supp. Exs. 48, 50.

[64] Marroso Supp. Ex. 16.

> Enron's management created a cut-throat "snake pit" culture, "were in on an effort to hide an illicit side deal," and "can't be trusted," wanted reassurance that the prosecutorial "process" would continue up the ladder.[65]

55. Analysis of the television coverage of the verdict in the Barges case reveals a similar pattern -- more coverage, more detail, and more local themes in Houston than anywhere else.

56. On November 3 (verdict announced in the afternoon), the five main stations in Houston aired 15 news segments, including teasers, about the verdict. These segments exemplified Houston's television coverage of Enron generally. They were lengthy and detailed, totaling nearly 19 minutes of coverage -- an average of more than one minute per segment. Special effects, custom graphics, and evocative visuals of the Enron building and the "Crooked E" logo were common. Many segments included extensive interviews with Sheila Kahanek and her attorney. Others explicitly linked the Barges verdict to the upcoming trial of these defendants.[66]

57. In contrast, that same day, the fourteen stations in Atlanta, Denver, and Phoenix aired 2 segments, totaling 45 seconds, about the verdict. Of the four national networks (ABC, NBC, CBS, and

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[65] Marroso Supp. Exs. 27, 28.

[66] Marroso Supp. Ex. 57.

Fox), only CBS aired a single 30-second segment about the Barges verdict on November 3.[67]

58. Television coverage the next day was no different. On November 4, the five main stations in Houston aired 16 news segments, including teasers, about the verdict. As with the previous day's coverage, the segments were lengthy and detailed, totaling nearly 12 minutes of coverage -- approximately 45 segments per segment. Special effects, custom graphics, and visuals were liberally employed. Many segments showed Kahanek's post-trial press conference.[68]

59. The fourteen stations in the other four venues surveyed aired a total of 8 segments, totaling 5.5 minutes. Five of these were "summary segments" where the anchor quickly runs through news of the day. The Barges verdict received one or two sentence mentions in these summary segments, but nothing remotely close to the detailed coverage in Houston.[69] None of the four national networks aired any segment about the Barges verdict on November 4.[70]

| COMPARISON -- TELEVISION COVERAGE OF BARGES VERDICT | | | | | | |
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[67] Marroso Supp. Ex. 67.

[68] Marroso Supp. Ex. 58.

[69] Marroso Supp. Ex. 58.

[70] Marroso Supp. Ex. 68.

| | | ton | nta | er | nix | onal News |
|---|---|---|---|---|---|---|
| | | | | | | |
| 11/3/04 | Segments | 15 | 2 | 0 | 0 | 1 |
| | Time (in minutes) | 18.87 | 0.42 | 0.33 | 0 | 0.5 |
| | | | | | | |
| 11/4/04 | Segments | 16 | 2 | 5 | 1 | 0 |
| | Time (in minutes) | 11.65 | 1.0 | 3.5 | 1.0 | 0 |

60. The Chronicle's SPECIAL REPORT:ENRON website added five more "Jury Convictions" and one "Acquittal" to its "Prosecution Scorecard," leaving for last the "Others Charged" category, a list headed by Lay, Skilling and Causey.[71] The fact that the most prominently dedicated portion of the newspaper's website is to the Enron affair reflects the Chronicle's studied conclusion of the comparative importance of the Enron scandal to the community. It is the number one long-running story. And the fact that the outcome of the Skilling and Lay cases is singled out

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[71] Marroso Supp. Ex. 67.

as the main unfinished business on the prosecutor's scorecard is an indication that it is the prime feature of this number one story. It is the remaining item that requires "closure."

61. On November, 7, 2004, the Chronicle segued from the Barges verdict to defendants' venue motion.[72] The column by Loren Steffy entitled "Let's hope justice keeps blindfold on" concerned the federal sentencing guidelines and the perceived need for uniform prison sentences for similarly culpable white collar criminals.[73] Steffy's column exemplifies the Chronicle's long-standing theme of reassuring the community that the Task Force is conducting a thorough investigation into the perceived crimes at Enron that will ultimately lead to the convictions of Skilling and Lay.

62. First, the column summarized Enron Task Force prosecutor Kathryn Ruemmler's closing argument urging the jury "to invoke common sense to cut through Enron's financial smoke screen and determine whether Enron and Merrill Lynch executives concocted a fake sale of floating power plants off Nigeria to gussy up Enron's finances." Steffy commended the jury for taking Ruemmler's advice and exercising common sense by convicting 5 of the defendants.[74]

63. Second, Steffy intimated that if the jury in the upcoming trial of Skilling, Lay, and Causey

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[72] Marroso Supp. Ex. 20.

[73] Marroso Supp. Ex. 20.

[74] Marroso Supp. Ex. 20.

applies "common sense," it, too, will convict. "SCORE one for common sense. *Let's hope it holds.* That most powerful of moral compasses landed a major victory last week as jurors meted out *the first Enron-related convictions*, finding guilty five of the six defendants in the so-called barge trial." Later in the column, Steffy explained that "whether common sense ultimately prevails *in the barge trial*, though, depends on what happens as the case moves through the sentencing phase." Common sense, Steffy says, "may help ensure that the barge trial defendants are sentenced only for crimes the jury actually finds them guilty of." The implication is that low-level employees convicted of white collar crime should not receive the more severe sentences as high-level executives for whom Steffy has no "pity."[75]

64. Third, and perhaps most illuminating, Steffy asserted that the Barges jury's acquittal of Sheila Kahanek would negatively impact Skilling's attempt to transfer venue. "The verdict says something about Houston, too. As angry as we are about Enron's abuses, we can still be fair. Sheila Kahanek's acquittal will make it difficult for other defendants, former Chairman Ken Lay and former executive Jeff Skilling among them, to argue an impartial jury can't be found here."[76] In the

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[75] Marroso Supp. Ex. 20. (emphases added).

[76] Marroso Supp. Ex. 20. On November 20 2004, the Chronicle ran a news story about the postponement in the Enron broadband criminal trial. Echoing Steffy's assessment, this article noted that "because there was an Enron defendant acquitted [in the Barges trial], lawyers in the upcoming [broadband] trial who complained the local jury was tainted do

McVeigh/Nichols case, which is discussed below, I witnessed similar attempts by the media to justify holding a trial in the very community that had been devastated by the bombing of the Murrah Federal Courthouse.

65. Steffy offered his assessment on November 7, 2004 -- the day before defendants motion to transfer venue was due to be filed. It is rare for any reporter or columnist to opine personally on the merits of a procedural motion, especially one that had not yet been filed.

66. Prior to November 7, 2004, the Chronicle had written about the possibility of a change in venue in Enron-related prosecutions ten times. This is an unusual concentration of editorial emphasis on procedural developments in related trials. It reflects the Chronicle's perceived need to reassure the Houston community that closure to the Enron case by will most likely result from keeping the trials in the Houston area.[77]

67. In sum, the Houston local news media's coverage about the Barges defendants both explicitly stated and implied that there was an importance beyond the trial itself -- the Task Force is building individual cases that ultimately will come together against Skilling and Lay, who are perceived to be responsible for the full range of activities beneath

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not expect the judge will grant their request to move the trial to another city." Marroso Supp. Ex. 11.

[77] Marroso Supp. Exs. 29-38.

them. The Houston local news media's coverage assumed the Barges jury was weighing the actions of those defendants in terms of their comparative guilt as opposed to the more obvious guilt of the senior executives. Skilling and Lay, even when they are not identified by name, are without fail understood in the premise of the thousands of news media pieces to be ultimately "responsible" for what happened at Enron. In essence, the underlying editorial theme has been that they are either directly culpable for Enron crimes or were responsible for the systemic values and practices that precipitated those crimes. The Barges trial in particular created an expectation that the circle was tightening; the lower level executives had testified against senior executives.

### B. Prosecutorial Efforts to Collect Additional Testimonial Evidence Against Skilling, Lay, and Causey.

68. In the last month and a half, the Houston media has reassured the Houston community that prosecutorial efforts continue to amass testimonial evidence against Skilling and Lay.

69. On November 11, 2004, the Chronicle reported that the sentencing for "Enron witness," Mark Koenig, the former head of Enron's investor relations section, had been postponed. The Task Force's rationale for delaying Koenig's sentence was made explicit: "The defendants have agreed to be sentenced after the government finds they have cooperated fully, which means they are sentenced after the last case in which their testimony could be

needed. Koenig is likely to be asked to testify in the trial of ex-Chairman Ken Lay and ex-Chief Executive Office Jeff Skilling. Their trial date has not yet been set but is expected to be no sooner than summer of 2005 and likely later than that."[78] No other newspaper ran a story about Koenig's sentencing postponement.

70. On November 17, 2004, both the Houston Business Journal and the Chronicle reported that Lay's wife, Linda, was the "target of a federal investigation" based on a stock sale she made days before Houston energy giant collapsed.[79] To put the investigation of Linda Lay in perspective, the Chronicle noted that prosecutors, by charging Lea Fastow with crimes "got what they wanted ... Andrew Fastow's guilty plea and cooperation." And according to longtime Houston lawyer, David Berg, that is exactly the Task Force's objective here: "Now they are looking to hammer Ken Lay. And the hammer is his wife."[80]

71. Three days later, the Chronicle ran a column entitled "Desperate Housewives; Enron prosecutors have developed a secret weapon: placing pressure on the defendant's spouse." The column opened by stating, "FEDERAL prosecutors seem to have hit on the perfect technique for cracking those tough, macho Enron executives indicted after the company's collapse: just use an investigation of the alleged perp's spouse as a rubber hose to break down

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[78] Marroso Supp. Ex. 14.

[79] Marroso Supp. Exs. 12, 39.

[80] Marroso Supp. Ex. 12.

his will to fight it out in court. It's worked twice already." It then quotes Lay's counsel, Mike Ramsey, characterizing the investigation as a "low and dirty blow" and the prosecutors as "believ[ing] they were anointed by the Lord to do what they please." Mocking Ramsey's characterization of the Task Force, the article concludes: "If so, maybe they got that way by studying the behavior of their quarry."[81]

72. On November 24, 2004, the Chronicle's window into the prosecutors' approach to the Skilling and Lay cases emerged even more clearly in column by Loren Steffy. This one column exhibits virtually all of the qualitative components I observed emerging in the Houston media over the last 3 years: (a) detailed coverage; (b) emotional tone, especially sarcasm; (c) juxtaposition of victims and villains; (d) an assumption that Skilling and Lay are in fact guilty of the crimes charges; and (e) the need to constantly reassure the Houston community that the Task Force is collecting evidence and marching toward the ultimate convictions of these defendants. Because of its revealing nature, the column is quoted in its entirety:

> Linda Lay understands.
>
> She understands that prosecutors are going to scrutinize the sale of Enron stock by her family charity that allegedly occurred minutes before a credit rating downgrade that

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[81] Marroso Supp. Ex. 10.

plunged her husband's company into bankruptcy.

She understands because she told us so, way back in January 2002, during her televised sobfest on the *Today* show.

She understood, she said then, why everyone was angry with her husband, former Enron Chairman Ken Lay, and why they blamed him for the company's collapse.

"He is at the top," she said. "If I were back there listening to all the things that were being said, I would absolutely have to say that: 'What is wrong here? How can all of this be happening without something — someone doing something terribly evil?' "

How indeed? For the past three years, prosecutors have been trying to find that someone — or someones — and bring them to justice.

Her husband, of course, is one of the prime candidates for someoneship.

Which is why the stock sales by the Linda and Ken Lay Family Foundation caught prosecutors' attention. They're looking for leverage and perhaps a little payback after Ken Lay spent the summer berating them as part of his post-indictment media blitz.

Prosecutors "used" Lea Fastow to extract a plea from her husband, former Chief Financial Officer Andrew Fastow, and now they're "using" Linda Lay to get at her husband, former Chairman Ken Lay.

It's a hardball tactic, but then, Enron was hardball fraud.

From the beginning, Enron prosecutors have approached the case more like an organized crime investigation than a corporate fraud prosecution. Given Enron's tangled web of deals, the myriad of willing co-conspirators, and the sheer pervasiveness of fraud, corruption and self-dealing, the tactic makes sense.

## For better, for worse

Consider the involvement of spouses and extended family in the Enron's business. Lea Fastow wasn't just a tax-cheating stay-at-home mom, she had been an assistant treasurer at Enron. She tried to pull her father into one of the partnership deals, and he received a fee for his trouble when it didn't work out. Her father-in-law oversaw a family foundation that was the conduit for Andrew Fastow's illicit gains.

Michael Kopper's domestic partner profited from the partnership deals as well.

Jeff Skilling's wife was the board's corporate secretary. She resigned in 2001, before they got married.

A family affair

Linda Lay herself was a former Enron employee, and Ken Lay's family was hip deep in Enron.

His sister owned part of a travel agency that provided services for the company, generating commissions that one year were almost $2 million. And Lay's son, Mark, was an officer in a company Enron used to begin its pulp and paper trading business. He got a three-year contract with Enron paying him a minimum of $250,000 a year plus stock options, according to the company's 1998 proxy statement.

All of this was business as usual, so steeped in the sense of entitlement that pervaded Enron's elite that no one questioned or cared whether it was contributing to that "terrible evil" that brought the company down.

Linda Lay said she understood the need to find the source of that evil, so she must understand why prosecutors are snooping around her foundation's stock sale, even as her attorney acts incredulous.

Prosecutors believe "they are anointed by God to do what they please," whimpered Lay defense lawyer Mike Ramsey.

The guy's supposed to be the best legal talent in the country and so far his defense is part Sgt. Shultz — Ken Lay knew nothing — and part Coasters — why's everybody always picking on his clients?

If Linda Lay sold stock on insider information, it's worth a look. As a practical matter, though, insider trading is hard to prove.

On Nov. 28, 2001, Linda Lay allegedly had the foundation sell 500,000 Enron shares for a quick $1 million just as rumors were beginning to circulate that Dynegy's proposed acquisition had collapsed.

The Lays personally never received any proceeds from the sale, and the assets of the foundation were distributed to various charities.

Ramsey told my colleague Mary Flood last week that the sales occurred after credit agencies slashed ratings on Enron's debt. Linda Lay was simply trading on public information, he claims. According to the New York Times, the trades occurred at least 10 minutes before the first rating cuts were announced.

## More to come

Even if true, it would be a piddly transgression by Enron standards, but Linda Lay understands why it's getting so much attention. Her husband was at the top, the head joker in the house of cards.

Her tears, the ones already cried on national TV and the ones no doubt yet to come, are a mere puddle compared with the sea of suffering and sorrow her husband and his cronies bestowed on so many others when those cards collapsed.

That's the reason prosecutors are scouring her stock sales as well as her husband's, and why they may

> even use the threat of prosecution against her to make him heel.
>
> But don't worry. As she already told us, Linda Lay understands.[82]

**73.** Unlike the Houston media, the papers in the other venues surveyed barely touched the Linda Lay angle. The Arizona Republic, Denver Post, and Rocky Mountain news ran no articles concerning the Task Force's investigation into Linda Lay's stock sale or how it related to the prosecution of these defendants. The Atlanta Journal-Constitution ran a one-paragraph blurb about the investigation in its Daily Briefing section.[83] The New York Times and Washington Post each ran one story about the Task Force's investigation of Linda Lay and observed that it was likely a prosecutor ploy to put pressure on Ken Lay in this case.[84]

## IV.
## THE McVEIGH/NICHOLS MODEL: CIVIC JOURNALISM

74. The Task Force characterizes Skilling's motion and its media analysis as contending that sensational pretrial publicity is the *sole cause* of community prejudice.[85] My review of the Houston

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[82] Marroso Supp. Ex. 8.

[83] Marroso Supp. Ex. 42.

[84] Marroso Supp. Exs. 53, 66.

[85] Opp. at 6 ("To justify transfer based on pre-trial publicity, the defendant shoulders the heavy burden of establishing that the publicity in essence displaced the judicial process."); 10 ("The Fifth Circuit has recognized the rarity of

media's coverage of Enron revealed a distinctly different phenomenon -- that of "civic journalism." As explained in detail below, civic journalism describes the situation where the media serving a community impacted by a local tragedy, instead of telling its audience what the editors think the community should know and feel, listens to the community to identify the community's beliefs and informational needs. In other words, the tragedy itself causes community sentiment; the media coverage *reflects*, *reinforces*, and *amplifies* the sentiment through the "feedback loop" described in my initial report.[86]

75. Through civic journalism, the Chronicle presented a nearly continuous flow of information with interpretation by legal experts, concentrating on the news which the community needed to have to assure it that progress was being made. The television coverage adapted these newspaper themes to its own medium, concentrating on a simplified view that the cases against Skilling and Lay were coming together. This local news media coverage was of a more conclusory nature, pointing unfailingly to the direction in which the prosecution of the cases was moving, to a definitive conclusion, the conviction of the individuals responsible.

76. I have observed the phenomenon of civic journalism most often in connection with

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venue transfers based on pretrial publicity."); 13 ("Tellingly, defendants are able to point to only one case in this district in which a court has held the transfer of venue was warranted based on pretrial publicity.") (emphases added).

[86] Armstrong Decl. ¶ 9.

natural disasters and man-made events that acutely affect a given community. One prominent example of the latter was the local media's reaction to the 1995 bombing of the Alfred P. Murrah Federal Courthouse in Oklahoma City, Oklahoma.

77. I was retained by counsel for the alleged (now convicted) Oklahoma City bomber Terry Nichol, and testified as an expert in media analysis in favor of a change of venue. During my review, I observed and identified several indicators of civic journalism in Oklahoma City, indicators not present in other places. The observable disparity in media reaction revealed palpably different community anguish and predisposition against the defendants in Oklahoma City (and other nearby Oklahoma venues) than anywhere else.[87] The Court, relying in part on my testimony, transferred venue from Oklahoma to Denver, Colorado.

78. To be sure, the trauma inflicted on the 168 people murdered and the hundreds more injured by the Oklahoma City bombing is different in nature and scope than the economic suffering inflicted on Houston by the collapse of Enron. However, what is important from a media perspective is not the level of violence associated with an event, but rather the community's reaction to the event and, critically, the media's response to that reaction. In many ways, the Houston media's response to Enron's collapse mirrors the Oklahoma media's response to the Oklahoma City bombing. Among other similarities:

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[87] Marroso Supp. Exs. 2, 3.

a. Predominately Local Impact: In both cases, the underlying alleged criminal events, while of unquestioned national significance, were identified as having a predominantly local impact. National news and local news in venues outside of Oklahoma covered the bombing of the Alfred P. Murrah Federal Coourthouse, the ensuing destruction, and the major events of the government's investigation and prosecution of McVeigh and Nichols. However, the coverage in Oklahoma was markedly different in quantity, depth of detail, intensity of language, consistent tones and themes, and focus. As time passed, national coverage and coverage by non-Oklahoma media leveled off; these media continued reporting on major events but not covering the minutiae as the Oklahoma media was compelled to do because of the needs of its community.[88] A similar pattern is seen here. In late 2001 and 2002, national coverage and coverage in other venues of Enron was fairly comprehensive, informing readers and viewers the basic who, what, where, when, and why. However, Houston's late 2001 and 2002 coverage differed from national and other venue's coverage not only on the number of stories, but in the level of detail, especially about the personal lives of Enron's highest executives, the intensity of the sentiment, particularly a sense of community betrayal, and focus on victims and perceived villains.[89] In 2003 and especially 2004, national coverage and coverage outside of Houston has waned tremendously. The Houston media, however, continues to churn out an impressive stream of detailed reporting, occasionally overheated rhetoric, and recurring editorial themes about the need for final closure by trying the key Enron executives.[90]

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[88] Marroso Supp. Ex. 2.

b. Extraordinary Resource Allocation: The Oklahoma media devoted "an unprecedented number of personnel" and resources to the bombing, including "the number of editors, the commitment of special resources, the -- the use of teams, broadcasting stations staying on the air extra time, the print -- the print media devoting extraordinary amounts of line inches, if you will, to the story, adding extra pages well beyond what their advertising would normally support."[91] Every one of these factors is present in Houston, in print, television, and other media. Houston's dedication of resources to covering Enron and its highest executives "is seen only very rarely at even the largest national daily newspapers. Even then, in cases such as the 9/11 terrorist attacks, foreign wars and tragic events, it is extremely rare to have such large deployments extended for so long. I do not recall another instance where a local paper dedicated as many resources to a single topic over such an extended period of time as the Houston Chronicle has dedicated to Enron."[92]

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[89] Armstrong Decl. ¶¶ 25, 52 ("The depth of this difference in coverage is a function of the fact that in Houston, unlike most of the rest of the country, the Enron bankruptcy and its impact is both a national and local story. Enron's bankruptcy and associated problems have rippled through Houston at many levels and is perceived to have affected its residents uniquely. Based on the accounts of various media, the Houston community, more than any other place in the country, feels it bore the brunt of Enron's demise. This community-wide perception is not reflected in the reporting of the news media in Atlanta, Denver, and Phoenix.").

[90] Armstrong Decl. ¶¶ 28-32, 39-40, 43; Armstrong Supp. Decl. ¶¶ 24, 27-40, *supra*.

c. Tragedy and Triumph of Victims: Oklahoma united as a "family," and like family members, craved details about their injured kin, everything "from the time they went to the -- to the federal building on April 19th; what happened to them there; how they came out; if they died, the memorial service; if they survived, how they recovered."[93] The same is true in Houston. "One of the Chronicle's primary editorial themes since December 2, 2001, has been the perceived victimization of the Houston community due to the Enron bankruptcy... Since 2001, the Chronicle has run 94 victim-related stories, more than 6 times the number of victim-related stories in any of the other papers."[94] Several of these human interest exposes describe in detail the financial, sociological, and psychological trauma inflicted on laid-off workers and their families.[95] As was the case in Oklahoma City, the Houston Chronicle saw the need to reassure the Houston community that its family is recovering and "moving on." On November 27, 2004, the Chronicle ran a lengthy article entitled "More of a hard lesson than a detour" that began with the line: "It's been three years since the stock market supernova imploded. Among the thousands who left the company following the bankruptcy, some former employees have moved far beyond that bad December."[96] The article chronicles 5 former Enron employees and, just as the Oklahoma media did, described how these victims have "overcome the tragedy."[97]

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[91] Marroso Supp. Ex. 2.

[92] Armstrong Decl. ¶¶ 23-32; ¶¶ 33-35 (television media dedicating inordinate resources); 53-57 (prominence of display and amount of line space in print media).

[93] Marroso Supp. Ex. 2.

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[94] Armstrong Decl. ¶¶ 67-73 (emphasis added).

[95] Armstrong Decl. ¶¶ 71, 72.

[96] Marroso Supp. Ex. 2.

d. Demonization of Perceived Culprits: "The intensity of the humanization of the victims in the public mind is in sharp contrast with the prevalent portrayals of the defendants. They have been demonized."[98] That observation is also applicable to Houston. In Oklahoma City, McVeigh and Nichols were portrayed in the media as right-wing "extremists" out-of-touch with mainstream community. In Houston, Skilling and Lay are portrayed as wealthy executives who made millions selling stock while their employees' retirements evaporated. My initial report included examples of the Houston media excoriating Skilling and Lay as being "shady" "liar[s]" living in a "fantasy world." The demonization of defendants has not abated. In fact, Houston's vilification has spread to family and counsel. Recently, the Chronicle's commentary mocked Lay's wife ("Her tears, the ones already cried on national TV and the ones no doubt yet to come, are a mere puddle compared with the seas of suffering her husband and his cronies bestowed on so many others when those cards collapsed.") and defense counsel ("Prosecutors believe 'they are anointed by God to do what they please,' whimpered Lay defense lawyer Mike Ramsey. The guy's supposed to be the best legal talent in the country and so far his defense is part Sgt. Shultz -- Ken Lay knew nothing -- and part Coasters -- why's everybody always picking on his clients?")[99] On November 10, 2004, the Austin American-Statesmen epitomized the collective judgment of Texas with respect to Skilling, Lay, and Causey: "What the defendants fear is the wrath of people who were harmed by the collapse of Enron after it was found to be a shell game. In Houston, it wasn't just investors who lost their shirts; thousands of employees lost jobs, savings accounts and pension plans, and institutions from the Astros to local charities were left in the lurch when the company failed. From a legal perspective, it makes sense that Skilling, Lay and Causey would want to be tried in a city where the damage wasn't so great and so personal. But from the standpoint of pure justice, the wealthy executives really should be judged right where their economic hurricane struck with the most force... It seems unfair to the Enron victims to have the disgraced executives living the high life in a top hotel in a great city while on trial for serious crimes."[100] That same day in the Star/Entertainment section of the paper, the Chronicle, calling Skilling a "desperate defendant," asked sarcastically "FROGGY GOES A-COURTING: Did once powerful Enron CEO Jeff Skilling really need pollsters to prove Houstonians want a change of venue for him worse than he does?"[101]

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[97] Marroso Supp. Ex. 7.

[98] *United States v. McVeigh*, 918 F. Supp. 1467, 1472 (W.D. Okla. 1996).

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[99] Marroso Supp. Ex. 8.

e. Civic Pride: In Oklahoma "[t]here [was] an evident and understandable pride of accomplishment in all that has been done to try to return to normalcy."[102] The same is true in Houston. Dozens of Chronicle articles, including some in the past few weeks, evidence pride in trying to return Houston to normal -- even 3 years after the Enron collapse. As just one example, a November 22, 2004 article entitled "SNAP gets back on track" begins "WHEN Enron went into its death spiral about this time three years ago, the reverberations were felt throughout Houston. Among those hurt were the many charities that benefited from Enron's largess." The article noted that after the company's collapse one charity saw its budget decrease $500,000 and was forced to lay off more than a quarter of its Houston staff. But, the charity, like Houston wants to believe of itself generally, "has slowly recovered, and now has its largest annual budget ever."[103]

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[100] Marroso Supp. Ex. 41.

[101] Marroso Supp. Ex. 15.

[102] *United States v. McVeigh*, 918 F. Supp. 1467, 1472 (W.D. Okla. 1996).

f. Purported Impartiality: Oklahomans harbored a fervent desire to host the prosecution of McVeigh and Nichols, despite the fact that the entire Oklahoma federal bench was recused from presiding over the case. "Many Oklahomans view a trial of this case as an additional challenge and want the opportunity to demonstrate their ability to be fair in spite of this extraordinary provocation of their emotions of anger and vengeance. They seek participation in the trial to demonstrate an ability to overcome a tragedy with such powerful emotional impact that people have come to measure time by it."[104] Houston similarly wants to host the prosecution of Skilling and Lay, despite the fact that the entire United States Attorney's Office for the Southern District of Texas was recused from prosecuting the case. A little more than one month ago,

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[103] Marroso Supp. Ex. 9.

[104] *United States v. McVeigh*, 918 F. Supp. 1467, 1472 (W.D. Okla. 1996).

Chronicle columnist Loren Steffy reassured the community that the prosecution of Skilling and Lay should and would take place in Houston. "The verdict [in the Barges trial] says something about Houston, too. As angry as we are about Enron's abuses, we can still be fair. Sheila Kahanek's acquittal will make it difficult for other Enron defendants, former Chairman Ken Lay and former chief executive Jeff Skilling among them, to argue an impartial jury can't be found here."[105]

g. The Road To Justice: Perhaps the most powerful theme I observed in Oklahoma was a "need to see how the investigation [is] proceeding, how the trial and procedures are proceeding, to see what the outcome of various decisions will be… what some in the media have the called 'the road to justice,' making things right again; getting some closure on these issues."[106] The Oklahoma media responded to these needs by reporting on every detail of forensic evidence collected by the prosecutors. Over the course of dozens of articles, the picture was painted that the prosecutors were assembling a seamless web of irrefutable forensic evidence against McVeigh and Nichols that would result in justice -- convictions. The Houston community exhibits a similar intense need to track the progress of the Task Force's prosecution in order to achieve closure. Like its Oklahoma City counterpart, the Houston media has responded accordingly by reporting almost daily on the building of the Task Force's case, only this time it is the collection of *testimonial* evidence from insiders that serves to reassure the community justice will be served. The Chronicle described the Task Force's approach as "a classic pattern of trying to turn people down the food chain into informants who help them make cases against those further up,"[107] and is designed to develop "star witnesses"[108] who ultimately will testify against the top executives."[109] This theme was was recently epitomized by the November 11 Chronicle article reporting that former Enron employee Mark Koenig's sentencing had been postponed so he could "testify in the trial of ex-Chairman Ken Lay and ex-Chief Executive Officer Jeff Skilling."[110] No other paper surveyed covered this story. For the Chronicle -- and more

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[105] Marroso Supp. Ex. 20.

[106] Marroso Supp. Ex. 2.

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[107] Marroso Ex. 220.

[108] Marroso Ex. 289.

[109] Armstrong Decl. ¶ 83.

[110] Marroso Supp. Ex. 14.

> importantly, for the community of Houston -- it adds another to the Task Force's ever-increasing trove of former Enron employee "star witnesses" who will sink Skilling, Lay, and Causey.[111]

79. What was true in 1996 about the Oklahoma media's coverage of the bombing of the Alfred P. Murrah Federal Courthouse is equally apt to describe the Houston media's coverage of the collapse of Enron. "Civic journalism" is the term coined to describe the effort by the local media to listen more carefully to the community in order to identify the community's needs and desires. With the ears of the editors attuned to those community needs, the local media's resources are deployed to interview local and state leaders, individual members of the community, representative victims from the community. The process is cyclical. As the local media editorializes about the community reaction, it receives further letters to the editor reflecting those opinions. The coverage of news events provides opportunities for the community to react and reflect their views of events. The cycle allows a constant updating the mood of the community.[112] "Civic journalism" is an expected response by local news media to the community's needs in the wake of a serious community-wide crisis. The pervasiveness of the civic journalism found in Houston in relationship to the Enron scandal is -- as it was in Oklahoma City in response to the Oklahoma City bombing -- a significant

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[111] Marroso Supp. Ex. 14.

[112] Marroso Supp. Ex. 2.

indicator that a traumatic event has had an extraordinary affect on the local community and its perception of those perceived to be responsible for the trauma. The local media coverage is not, by itself, a cause of community sentiment. Instead, the coverage reflects the affected community's attitudes. Moreover, the regular repetition in the local media coverage of certain themes reinforces and amplifies the community's "lens" through which all information is viewed. Any Houstonian selected for the jury in this high-profile case will have been consistently exposed to the community's expectation that the trial should bring the ultimate perpetrators to justice.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 17, 2004 in Santa Fe, New Mexico.

s/R. Scott Armstrong
Russell Scott Armstrong

# APPENDIX K

# SUPPLEMENTAL DECLARATION OF EDWARD BRONSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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|---|---|---|
| UNITED STATES OF AMERICA, | ) | Crim. No. H-04-25 |
| | ) | (Lake, J.) |
| Plaintiff, | ) | |
| v. | ) | |
| JEFFREY K. SKILLING and RICHARD A. CAUSEY, and KENNETH LAY, | ) | |
| Defendants. | ) | |

## SUPPLEMENTAL DECLARATION OF EDWARD BRONSON, PH.D., IN SUPPORT OF DEFENDANT JEFFREY SKILLING'S MOTION TO TRANSFER VENUE

I, Edward J. Bronson, declare as follows:

80. I am a Professor Emeritus of Political Science at California State University, Chico. I have previously submitted a declaration in this case in support of defendant Jeffrey Skilling's motion to transfer venue, and have now been asked to address issues raised by the Government in its response to the defendants' motions to transfer venue. In particular, counsel for defendant Jeffrey Skilling has asked me to analyze whether or not voir dire in the recent trial of the Nigerian barges case, *United States v. Daniel Bayly, et al.*, case number H-CR-03-363) (hereinafter, the "Barges case"), provides support for the Government's contention that a fair trial for Mr. Skilling can be had in Houston.

81. This declaration will be divided into sections, as follows:

I. Introduction and Summary of Conclusions.
II. Description of the Barges Case Voir Dire.
III. Analysis of the Barges Case Voir Dire.
IV. Responses to Other Points Raised by the Government.

## I. Introduction and Summary of Conclusions.

82. I have reviewed the 325-page transcript provided by the Government as Exhibit 2 to its Memorandum of Law in Response to Defendants' Joint Motion to Transfer Venue, and I set forth my analysis below. I note that certain pertinent

information relating to jury selection in the Barges case was not provided by the Government to the Court, including the answers to the supplemental questionnaire and the transcript of the early stages of the voir dire (such as the pre-instructions given in that case).

83. The Government assumes that, if a fair trial could be had in the Barges case, there should be no difficulty in providing a fair trial for Mr. Skilling (see Government Memorandum beginning at page 24). Both the Government's assumption and its conclusion are false.

84. The mere fact that the Barges case jury has not been challenged by any of the parties or their attorneys, or that one of the defendants in that case was acquitted, does not mean that the jury was in fact "fair." In many ways, voir dire in the Barges case was highly problematic, and there also is little reason to assume that persons with latent biases or hidden agendas were not seated in that case.

85. In fact, the survey evidence presented by both Dr. Philip Anthony (for the defense) and Dr. David A. Zagorski (for the Government) provide compelling evidence that voir dire in the Barges case was *not* adequate to ensure an unbiased jury.[1] Dr. Anthony's survey for Mr. Skilling found that over 37% of jury-eligible Houston residents believe that one or more former top executives at Enron are guilty of crimes. A subsequent survey conducted by Dr. Anthony for Mr. Lay found that nearly 32% of jury-eligible Houston residents believe that Kenneth Lay, specifically, is guilty of crimes. Dr. Zagorski's

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[1] For a more detailed explanation of the survey data being relied upon here, see discussion *infra* at ¶ 24.

survey likewise confirms and enhances these findings, with his data showing that between 49% and 58% of the jury-eligible population in Houston believes that Mr. Skilling, Mr. Lay and Mr. Causey are guilty of crimes.[2] Yet, in the course of voir dire for the Barges case, only *6 persons* out of a panel of 150—or just about *4%*—admitted that they believed there were "criminal things" going on at Enron. It is highly unlikely that the Barges panel was composed of such a statistically *un*representative sample. Instead, the only logical and reasonable conclusion that can be reached is that voir dire in the Barges case failed to reveal the true opinions and biases of the panel members.

86. Prospective jurors in the Barges case also apparently minimized the extent of their personal knowledge of or relationships with persons who were harmed by Enron's collapse. We know, for example, from Dr. Anthony's telephone survey that one in three persons in Houston, or roughly 33%, claims to know someone who was harmed by Enron's collapse. Nevertheless, only about *7 persons* on the Barges panel admitted during voir dire to knowing someone who was harmed by Enron's collapse (a mere *5%* of the 150-person jury panel). Once again, it is clear that voir dire in the Barges case simply failed to obtain highly relevant information from the panelists relating to potential areas of bias and prejudice.

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[2] In my opinion, D. Zagorski's findings are entirely consistent with those of Dr. Anthony. One would expect Dr. Zagorski to obtain higher verdict predisposition response rates in his survey because he included more prompting information in his questions and used a closed-ended response format – both of which design characteristics tend to increase response rates.

87. More importantly, even if one were to assume that a fair and impartial jury was picked in the Barges case, it would be error to conclude (as the Government does) that such a result in the Barges case ensures that a fair and impartial jury could be picked in *this* case. The Barges case involved much more limited facts, a single transaction, and some lower level employees. In sharp contrast, this case involves the top executives of the company and all of the transactions and supposedly false statements that allegedly *caused* the collapse of Enron, perhaps one of the most devastating events in the history of the city of Houston. While there may have been Enron executives involved in the Barges case, those executives certainly were not prominent or high-level, nor were they much known to the general public at all. In fact, they were virtually anonymous. Unlike Messrs. Skilling, Lay and Causey, the lower level executives also were not the focus of anger and resentment for the rest of Houston.[3] Thus, the Barges case had far less salience in Houston than this case will,[4] and it raised fairness problems only because of its potential nexus to the "real" Enron case, this one.

88. In any event, one thing is abundantly clear from my review of the voir dire that occurred in the Barges case: if the same approach to voir dire

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[3] Per the data collected by the Government's own survey expert, as adjusted by Dr. Anthony in Table 1 of his Supplemental Declaration to reflect percentages of the eligible jury population as a whole, more than 50% of jury eligible Houstonians believe that Messrs. Skilling, Lay and Cause are guilty of crimes relating to Enron.

[4] I discuss the concept of "salience" at length in my prior declaration, beginning at paragraph 34.

and sustaining challenges for cause is taken in this case, it will be extraordinarily difficult to achieve a fair jury for Mr. Skilling and his co-defendants in Houston. As explained in greater detail at paragraphs 30-32 herein, if the Government intends to take the same approach in this case as to what qualifies for a dismissal for cause as the Government did in the Barges case (which they must, since they are telling the Court that the Barges voir dire process indicates that a fair and impartial jury can be picked here), most if not all potential jurors in Houston would *necessarily be excluded for cause.* In the Barges case, prosecutors stipulated to the dismissal of virtually any juror who either (1) knew about the Barges case and expressed any prejudgment (a very small group), or (2) knew about Enron's bankruptcy or the fallout therefrom (which the court assumed was true of all panelists) *and* indicated that either (a) such awareness would lead to prejudgment in the Barges case or (b) such awareness gave rise to some other bias. My review of the transcript found no situation in which the Government contested the dismissal for cause of any panelist who exhibited any indication of bias against the defense.

89. In this case, the first category of automatic dismissals used in the Barges case will expand exponentially because, unlike that case, the subject matter of this trial is readily familiar to virtually everyone in Houston -- the top executives of Enron are being tried for anything and everything that allegedly contributed to the collapse of Enron. Given the evidence of how informed and opinionated the Houston juror population is when it comes to the collapse of Enron (and as to who should be held

responsible for that collapse), mass dismissals for cause should be expected in this case. Such mass dismissals would not be necessary, however, if this case were to be transferred to an alternate venues like Phoenix, Denver or Atlanta, where there is no long-running relationship with Enron, where the effects of Enron's collapse were not felt as acutely, and where the population of potential jurors has not been exposed to the same levels of pretrial publicity as Houston jurors have.

## II. The Barges Case Voir Dire.

90. I will briefly describe the nature of the voir dire in the Barges case. After an introduction and handing out of supplemental questionnaires, the questionnaires were filled out by the panel. The completed questionnaires were then copied and distributed to counsel, to all parties, and to the judge, who met in chambers to identify appropriate cause challenges and to discuss those panel members whose questionnaire responses required individualized and sequestered questioning, which was done later at side-bar.

91. A few questions were then asked of the entire panel in open court. For example, the judge asked the entire panel (a) if they knew or recognized any persons on the witnesses list or defendants or lawyers to whom they had been introduced (71[5]); (b) whether any of the prospective jurors had family or

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[5] Unless otherwise indicated, all numerical references in parentheses are to page numbers of the Barges case transcript excerpts attached as Exhibit 2 to the Government's Memorandum of Law in Response to Defendants' Joint Motion to Transfer Venue.

friends employed by a criminal justice agency (78); and (c) whether the panel members or their family members or friends had any involvement with criminal matters.

92. In each case, those few prospective jurors who answered "yes" were then asked by the judge if any of these things would bias them. The few who expressed reservations were not questioned further in front of the panel. Several of those who said "no," indicating that they would not be biased, were then asked leading, redundant, and conclusory questions such as, "Would you be able, then, to fairly and impartially decide this case based only upon the evidence received at trial --" and "-- the instructions received on the law as I give it to you?" (75, 76, 84).

93. Next, the judge told the panel that he "imagined" that if he would ask them if they had "read or heard or seen anything about the bankruptcy of Enron or Arthur Andersen in the past three years or so, ... just about all you would have read or heard or seen something about some of those events that have been widely and publicly reported" (99). He received no dissent to this statement. Nevertheless, despite receiving implicit affirmation of his assumption that virtually 100% of the panel already knew something about such topics, there was no material follow-up done on that knowledge either through the previous questionnaire or in the voir dire.

94. Additional questioning by the judge on various topics followed. Although there was no attorney-conducted voir dire as such, attorneys were allowed to participate to a limited degree by stating their requested questions to the judge in front of the panel members.

95. The entire voir dire process for the Barges case, including the in-chambers discussion of each problematic panel member, was completed in one day.

96. Based on nearly 35 years of experience studying and doing research about juries and the effects of such influences as pretrial publicity on juries, I believe the voir dire conducted in the Barges case was deficient, particularly for a case involving Enron-related charges that was taking place in a venue that had been so profoundly affected by Enron's rise and subsequent fall. Such superficial questioning was patently insufficient to protect the six defendants against the effects of pretrial publicity, let alone for identifying and excluding potential jurors who have latent biases against the defendants as a result of Enron's collapse, who have an aspiration to sit on the jury in judgment of the defendants (for revenge or publicity purposes), or who might be affected by community pressure to convict.

## III. Analysis of the Barges Case Voir Dire.

97. Overview. In my prior declaration, I explained in paragraphs 84-100 why I did not believe voir dire would be an adequate remedy to assure the ability of Mr. Skilling and his co-defendants to receive a fair trial. My review of the voir dire transcripts from the Barges case confirms my initial opinion. Obviously, voir dire is a prime tool used by the court to achieve a fair jury, and in the overwhelming percentage of cases it is efficacious.

Only in cases like this one (and likely the Barges case as well) does the tool not work.

98. Limits of Voir Dire Generally in High Profile Cases. Voir dire is limited in many ways. As set forth in my prior declaration, people have great difficulty with the self-assessment of bias. To recognize one's own biases and determine how they will affect one's performance in the future (speculative at best) under great social desirability pressure, to understand how one mental factor will affect behavior, and to predict one's ability to control attitudes are all aspects of this problem. As one court once noted, "some authorities suggest that the accuracy of a person's estimation of his own fairmindedness is likely to be inversely proportional to the depth of his actual prejudices and predispositions."[6]

99. Minimization Effect. One factor I have identified and conducted research about is the minimization effect.[7] This is the tendency in voir dire of jury pool members in high-profile cases to minimize their exposure to media, their knowledge of prejudicial information, and any biases they may have. They know or learn that "good citizens" don't

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[6] *People v. Williams*, 29 Cal.3d 392, 402 n.2 (1981) (citing Friendly & Goldfarb, Crime and Publicity (1967) p. 103).

[7] *See* E. Bronson, *The Effectiveness of Voir Dire in Discovering Prejudice in High-Publicity Cases: An Archival Study of the Minimization Effect.* California State University, Chico. Discussion Paper Series, 1989. Also published as The Effectiveness of Voir Dire in Discovering Prejudice in High Publicity Cases: A Case Study of the Minimization Effect in 20th Anniversary Celebration Seminar. California Attorneys for Criminal Justice, 1993, presented as *Does Prejudicial Pretrial Publicity Affect Jurors?* at national meeting, Law and Society Association, Madison, 1989.

have such exposure, knowledge, or biases, and sense that as jurors they should not admit such exposure to the black-robed judge sitting up on the bench. Response bias causes the juror-interviewee to pick up the subtle, and not so subtle, clues as to what the lawyer- or judge-interviewer wants to hear. In voir dire on prejudice, the message is clear: Good jurors are not supposed to have prejudicial information or biases about the case, but if they do, good jurors can set aside such matters and decide the case solely on the law and the evidence presented in court. And that is what jurors say. This is not to suggest that generally the venireperson will consciously dissemble (although that sometimes happens); it is to suggest that response bias will tend to mask certain information, both from the interviewer and the interviewee.

100. In my research in connection with many cases, I see a form of language utilized by which prospective jurors seek to minimize any exposure, knowledge, or bias they might have. They use again and again words or phases such as "just," "only," "all I know is," and many others.[8] There were many examples of verbal cues indicating minimization during the Barges case voir dire, among which are the following:

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[8] There is good evidence that such language is minimization because we can see, at least in some situations, that it is obviously a non-sequitur. For example, in one case a prospective juror said, "All I know is that he raped and murdered her." Sometimes we also see remarks like, "I just know what was reported in the newspaper," when what was reported was about every prejudicial piece of inflammatory information.

- A panel member saw an article that morning from the Houston Chronicle, and described it as "Just a brief page for one article" (128).
- Another panel member had seen some news accounts: "A couple of articles in the Houston Chronicle" (basically implying "just") (138). When asked if he had discussed this case with anyone, he said, "[M]y wife. I mean, not today" (again, an implied "just" or "only") (139).
- Another remarked that his retirement system lost money because of Enron's collapse. Asked if he lost money in the retirement fund, he said: "Just the system itself" (133).
- A panel member said she had seen "the newspaper yesterday and just a little bit this morning" and "just on the news" (199). She added, "they showed a little clip about it, but it just showed some people" (199-200). When asked if she had talked about it, she said "Not really. My husband just woke up this morning and said, 'Here. You need to read this article,' and I read it" (200).
- One panelist said that he had seen some publicity. He explained, "Just the normal stuff . . . more of a cursory reading" (233).

- Another stated, "That's all I heard . . . just one small blurb on the radio" (247).

101. Minimization of Beliefs About Enron Executives Being Criminals. Separate and apart from the evidence of minimization present in the language used by panelists during voir dire in the Barges case, there is objective evidence that minimization in fact *occurred* there. One such example involves the court's good faith, but misguided, attempt to investigate whether the panelists had a preconceived belief that criminal conduct was occurring at Enron. The question initially posed by the court to the entire panel was as follows:

> [W]hether any of you have formed some opinion from what you've read or heard generally about the Enron bankruptcy or the Arthur Andersen situation or whatever that there was something criminal going on at Enron or, at times at Enron, and you have that view; and whether, if you did have such a view, it would transfer over, and you, therefore, are going to have a bias against them, or that you are going to not be able to give them the presumption of innocence to which they're entitled (252-53).

This somewhat lengthy, confusing, compound, and leading question clearly suggested to the panelists that the "right" response was a "no" response. Perhaps recognizing the problem with the way in which the question initially had been asked, the court continued: "Let me start with that. Is there anyone just having come to some opinion, other than what you have already said to me up here . . . *[I]s there anyone on the panel who just believes that, you know, there was just criminal things going on at Enron?*" (253).[9] Out of a panel of 150, only *6* prospective jurors stood up in response to the judge's question. Most (but not all) of these panelists were struck, but the more disturbing fact is that more members of the panel did *not* stand up.

102. The survey evidence submitted by both the prosecution and the defense in this case shows that there should have been far more than 6 people (or just 4% of the 150-person panel) who claimed to believe that there were "criminal things going on at Enron." For example, Dr. Anthony's original survey on behalf of Mr. Skilling found that, in response to the request "Please name all the former top executives of Enron who you believe are guilty of crimes," 287 out of 773 potential jurors in Houston (or 37.1% of the population) provided at least one or more specific names for "guilty" executives (with 95 potential jurors, or just over 12%, naming Mr. Skilling in particular as one of those executives).

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[9] Oddly enough, the Government at page 26 of its memorandum characterized this question as open-ended. However, this was a standard closed-end question. In fact, panelists technically were not even asked to respond, just to stand up. The Government also says that just four jurors stood up, but it appears from the transcript that Juror Nos. 80, 40, and 106 initially arose (253), then were joined by Juror Nos. 91, 102, and 112 (258), the first of whom "popped up," according to the judge (258). Thus, there were six such jurors, though this was not an important difference.

Dr. Anthony recently did a further study for Mr. Lay, and in response to the same question, found that nearly 33% of potential jurors in Houston identified Mr. Lay as a former Enron executive who was "guilty of crimes." Finally, the Government's survey expert, Dr. Zagorski, recently conducted a study of his own that confirms and significantly enhances Dr. Anthony's findings as to prejudgment of guilt, in that Dr. Zagorski's data show that between 49% and 58% of all jury-eligible Houston residents believe Messrs. Skilling, Lay and/or Causey are "definitely" or "probably" guilty of a litany of crimes.[10] In my professional opinion, it is highly unlikely that the panel of prospective jurors in the Barges case was composed of such a statistically unrepresentative sample. Instead, this incident far more likely confirms that minimization was occurring during the voir dire process in the Barges case, and that the panelists there were either subconsciously or consciously not being fully forthright about their potential biases and prejudices.

103. Minimization of Personal Relationships with Victims of Enron's Collapse. Another example of minimization occurred with respect to questioning about whether the panelists knew anyone who had been harmed by Enron's collapse. My review of the Barges case voir dire transcripts discloses that only

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[10] Although it does not affect my opinions about the Barges case voir dire, I agree with Dr. Anthony that the manner in which Dr. Zagorski reports his data is somewhat misleading because Dr. Zagorski fails to calculate what portion of his sample *as a whole* was predisposed to find the defendants guilty. I cite here the adjusted Zagorski data, as calculated by Dr. Anthony in Table 1 of his Supplemental Declaration.

7 persons[11] claimed to know someone harmed by Enron's collapse, which, again, would be *5%* of the 150-person jury panel. In contrast, Dr. Anthony's telephone survey for Mr. Skilling found that just under 32% of jury-eligible Houston residents claim to know someone who was harmed by Enron's collapse. Once again, because it is highly unlikely that the panel itself was a non-representative sample of the Houston jury pool, the best explanation for this discrepancy is that panelists consciously or subconsciously minimized disclosure of their relationships with persons who were harmed by Enron's collapse.

104. The Barges Voir Dire Adequately Addressed Many Overt Biases, But Ignored Many

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[11] Barges Juror Nos. 30 (167), 36 (170), 40 (177), 71 (202-03), 75 (208-09), 83 (218), and 94 (229-30). One of the seven, Juror No. 30, had a sister-in-law who had worked for Enron previously and had money in the company's retirement plan. Although I included her in the list, it is unclear if the sister-in-law was hurt by the collapse or had left her job and withdrawn her retirement funds before the collapse. Similarly, I included in the list Juror No. 94 – who said that a friend of her mother used to work at Enron – even though there is no indication as to when that was or whether her mother's friend left her job before the collapse. Finally, there were five other panelists who had *personally* lost money from owning Enron stock, or whose retirement plans had owned Enron stock, or who might otherwise have been personally damaged in some way. I did not include this latter group in my calculation because it seems unlikely that Houston residents responding to Dr. Anthony's question, "Do you personally know anyone who has been harmed by what happened to Enron?" would have said "yes" to this question if they were talking about themselves. Even if I added this latter group to the initial seven, that only brings the voir dire total to 12 persons, or *8%*, compared with the 33% found in Dr. Anthony's survey.

Latent Biases. In response to three questions dealing with general biases on the supplemental questionnaire,[12] several panel members disclosed that they, their family, their friends, or their own retirement accounts lost money. While people with these types of biases generally were excused, others who appeared equally biased remained. For example, one panel member said that her best friend's son-in-law lost his job at Enron when it closed (203), and that, as a result, "I'd have some opinions against Enron, but not against these people [Barges defendants]." (204). She went on to acknowledge that, in her view, "[I]t devastated a company and the economy and people." (*Id.*) She was not struck. Similarly, one of the 6 panelists who admitted to believing that there were "criminal things going on at Enron" also was not excused, even though she said that she had followed the Enron case carefully and believed there was criminal activity (265). Although she was "pretty disgusted with the Enron mess," she also thought that the corruption started at Enron, so she felt she could be fair in the Barges case (266). Whether either of these jurors should have been allowed to serve even on the Barges jury is questionable, but, in looking forward to a trial in this case, there can be no doubt that they and others like them will have to be dismissed for cause.

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[12] As the Government acknowledges in its memorandum, the questionnaire inquired as to whether: (1) the panel member, a family member or close friend had ever been employed by Enron; (2) whether the panel member, a family member or close friend owned Enron stock or participated in a retirement or 401-K plan that owned stock at any time in the past ten years; and (3) the panel member, a family member or personal acquaintance was negatively affected as a result of either the Enron bankruptcy or the fact that Arthur Andersen ceased doing business.

105. Overt Biases Against the Defendants in This Action Were Not a Disqualifying Factor for the Barges Case. Another reason why it does not follow that a jury can be picked in this case simply because one was picked in the Barges case is that persons harboring biases against Messrs. Skilling, Lay and Causey were allowed to remain on the Barges panel. Although neither the judge nor the jury questionnaire asked about Messrs. Skilling, Lay or Causey, many panel members revealed feelings of bias or prejudice against them. For example, when asked a question about the Barges case witness list, one panel member responded: "I would take their (Skilling's and Fastow's) testimony with a grain of salt" (130). This juror was not struck until he also spoke of having some prejudice against Andersen accountants (133).

106. Potential Areas of Bias Were Not Adequately Probed. The Government asserts at page 26 of its memorandum that, "[t]o further identify prejudice, the Court presented the panel with a long list of potential party witnesses that included Causey, Skilling and Fastow .... Only one juror professed any acquaintance with or knowledge of the listed persons." This is false. The judge in his question did not ask the panelists whether they had "knowledge of" a person, but instead asked potential jurors to stand "just if you know them as a friend or acquaintance, so that, if that person walked in here, you'd say, 'Well, there's John Smith' or whatever because you happen to know that person" (104). That is a far cry from asking the panelists what

knowledge – or, more importantly, opinions – they have about any person on the related party witness list. The Government also suggests that, because defendant Causey was the only one of the three defendants who a potential juror claimed to know (and he by just one person), nobody on that panel even recognized Mr. Skilling's name. If that were true, then that fact would provide further evidence that voir dire is ineffective for picking a fair Houston jury because, again, we know from Dr. Anthony's and Dr. Zagorski's respective surveys that many more people than that "know of" Mr. Skilling and have opinions about him. The simple fact of the matter, though, is that the panelists were not asked the "knowledge" question the Government contends they were asked.

107. Limitations on Voir Dire in the Barges Case Provide Little Assurance of a Fair Trial. The problems faced by the defendants in the Barges trial arising out of pretrial publicity and community bias were substantially less than what the defendants in this trial will be forced to deal with if their trial is held in Houston. Nevertheless, while the court in the Barges trial made some effort to deal with the problems such things present, the voir dire it conducted does not provide evidence that the process adequately identified and excluded those jurors who may have represented a serious threat to the fair trial rights of the Barges defendants. For example, questions in the individual voir dire usually went quickly from an initial, probing question or from a specific, volunteered answer to a conclusory question. In other words, oftentimes after the possibility of bias was identified, the court would respond with "[W]ould you be able to set it aside,

disregard it for all purposes . . ." (80), or "Would you then be able to fairly and impartially decide this case based only on the evidence received at trial and the instructions on the law that I give you?" (80). Often there was no development of what panel members knew or what attitudes they had acquired (*e.g.*, at 201). Tellingly, at least one juror did not reveal his true feelings about the case until after the judge was prompted repeatedly by defense attorneys to ask more precise publicity questions (*e.g.*, 239). Only after pointed questioning did the juror admit: "And the first time you [judge] asked this question [regarding publicity] I didn't say very much. But then you asked it again I decided that I would tell you – I've been pretty disgusted with the Enron mess ... I think the corruption definitely started at Enron" (266-68).

108. Specific Limitations on Voir Dire of Jurors Who Served. Indeed, one of the more startling aspects of the Barges case voir dire record is the *lack* of information developed relating to the 16 jurors who were chosen to serve.[13] Only four of

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[13] The trial judge adopted the uncommon, but I think commendable, practice of not telling the 16 people chosen to serve which of them were jurors and which were the alternates. Only 4 of the 16 were examined at side-bar, but 1 of the 4 (voir dire number 51, juror number 11) had stood at open voir dire in response to a question asked by the court. The 16 jurors, numbered 1 through 16, had juror numbers ranging from 1 through 150 at voir dire. I will not identify them by name in this declaration, but set forth in the table below their respective juror numbers, voir dire numbers, and the voir dire transcript page numbers (if any) at which they were individually examined:

the actual jurors were questioned, other than through the questionnaire. Of the four questioned at side-bar, Juror No. 4 was only asked about an imprisoned nephew; Juror No. 6 was only asked about his younger brother who was charged with drunk driving causing a death and received probation; Juror No. 8 was only asked about a prior misdemeanor conviction for domestic violence and his service as a witness in two cases; and Juror No. 11 was asked about her incarcerated son and her misimpression that she had heard something previously about the Nigerian Barges case. All of these jurors simply were asked conclusory questions about their ability to be fair and impartial, and all gave the same "appropriate" (and expected) answers.

| Juror No. at Trial | Juror No. for Voir Dire | Page(s) in Voir Dire Transcript |
|---|---|---|
| 1 | 1 | N/A |
| 2 | 2 | N/A |
| 3 (foreperson) | 21 | N/A |
| 4 | 26 | 141-46 |
| 5 (emailer) | 31 | N/A |
| 6 | 35 | 154-56 |
| 7 | 42 | N/A |
| 8 | 48 | 163-66 |
| 9 | 49 | N/A |
| 10 | 50 | N/A |
| 11 | 51 | 100-01, 180-85 |
| 12 | 56 | N/A |
| 13 | 57 | N/A |
| 14 | 58 | N/A |
| 15 | 61 | N/A |
| 16 | 72 | N/A |

No meaningful questioning occurred with respect to the jurors and alternates regarding their knowledge and attitudes about the topic of Enron and related matters. Thus, contrary to the Government's claim, the Barges jury's selection and service provides no evidence whatsoever as to whether voir dire would be effective in solving the problems of prejudicial bias from publicity and community hostility in a Houston-area jury that the parties in this case face.[14]

109. The Bases for Cause Dismissals in the Barges Case Illustrate the Difficulty of Picking a Houston Jury for This Case. Moreover, it is far from clear that the underlying principles used for voir dire in the Barges case will have the same purported efficacy here. In arguing that the selection of a jury in the Barges case shows that a fair and impartial jury can be "easily" selected here as well, the Government essentially concedes that it will adopt the same broad approach to dismissals for cause in this case that it did in the Barges case (if that is not true, then there is no justification for the Government's argument that the jury selection process in the Barges case presages how jury selection should be able to work here). Assuming that the Government's position on dismissals for cause will be consistent, it will be very difficult to find a jury for this case in Houston.

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[14] Of particular significance is the total absence of questioning of Juror No. 5. This is important because, as discussed in paragraph 34 below, Juror No. 5 has subsequently expressed opinions and biases that would have been important for the parties to know during the voir dire process.

110. The reason for this relates back to fundamental differences between this case and the Barges case. In the Barges case, prosecutors stipulated to the dismissal of virtually any juror who either (1) knew about the Barges case and expressed any prejudgment (a very small group), or (2) knew about Enron's bankruptcy or the fallout therefrom (which the court assumed was true of all panelists) *and* indicated that either (a) such awareness would lead to prejudgment in the Barges case or (b) such awareness gave rise to some other bias. My review of the transcript found no situation in which the Government contested the dismissal for cause of any panelist who exhibited any indication of bias against the defense – when either the defense (or sometimes even the Government itself) raised the for-cause issue, there was always a ready stipulation or tacit agreement.[15]

111. Application of the equivalent principles in this case, however, would result in the exclusion of most, if not all, of the prospective juror pool in Houston. As explained previously, unlike in the Barges case, this case likely will involve hundreds of persons on the parties' witness lists (dozens of whom are likely to be admitted criminals),[16] dozens if not scores of transactions, and several well-known, high-profile defendants. The first category of excludable witnesses from the Barges case – those with some knowledge of the pertinent facts of the *case to be*

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[15] See, e.g., Government Exhibit 2 at 135, 138, 141, 162, 180, 197, 210, 226, 229, 257, 259, 262, 264.

[16] Among other things, I am informed that the Government's unindicted co-conspirator list in this case contains over one hundred names. I would anticipate the Government's witness list to be similarly grand in scope.

*tried* who express some prejudgment – will balloon substantially. The prosecution of Messrs. Skilling, Lay and Causey will not be circumscribed to a narrow, obscure set of facts like in the Barges case; to the contrary, the Government has set the stage for this case as broadly as possible, accusing the defendants of causing the ultimate fall of Enron itself – an event that virtually everyone in Houston is aware of and about which they have strong opinions. Unlike potential jurors in Phoenix, Denver or Atlanta, potential jurors in Houston have a long-running, love-hate relationship with Enron and its former executives, they have felt the effects of Enron's collapse far more acutely, and they have been exposed to high levels of pretrial publicity present nowhere else. As compared to those alternative venues, Houston will be an impossible place to find sufficient jurors who do not have strongly held opinions about the "facts of this case."

## IV. Responses to Other Points Raised by the Government.

112. Significance of the Acquittal of Sheila Kahanek. It is of no significance whatsoever to the question of whether Messrs. Skilling, Lay and Causey can get a fair trial in Houston that Sheila Kahanek, one of the defendants in the Barges case, was acquitted. Initially, as a factual matter, Ms. Kahanek was a minor player, even among the other minor players who were defendants in the Barges case. She was a low-level executive; she had been with Enron only a short time; and she was charged with respect to only one allegedly fraudulent transaction which was not alleged to have caused

Enron's collapse. Thus, she was in a fundamentally different position from defendants Skilling, Lay and Causey, and her acquittal in the Barges case does not teach us anything about whether top executives of Enron can get a fair trial in Houston.

113. Juror No. 5. There is another factor related to Ms. Kahanek's acquittal that distinguishes her position from that of defendants Skilling, Lay and Causey. As noted earlier in footnote 14, one of the jurors who escaped any individualized voir dire (other than by questionnaire) is Juror No. 5. The following is from a media account of an email message Juror No. 5 sent to Ms. Kahanek's lawyer, Dan Cogdell, a week after the verdict in the Barges case. The article in question claimed to quote the email, and this is the part related to my point:

> Dear Dan:
> . . . I did want to give you a little feedback on our verdict [acquitting Sheila Kahanek]. . . . So, congratulations! You and Sheila left those NY lawyers choking in your dust. They probably scratched their heads over that one while telling everyone how stupid we are down here in Texas. I noticed the big boys want to change their trial location. DON'T MESS WITH TEXAS! ... [17]

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[17] "Self Defense: Enron Defendant Worked Alongside Attorneys to Win Acquittal," *Texas Lawyer* (Nov. 15, 2004) (capitalization in original). The email itself also is available on the *Houston Chronicle* website at: http://www.chron.com/content/chronicle/special/01/enron/trials/barge/

In my experience, it is highly unusual for a juror to write to a criminal defense lawyer after trial, but this email is truly unique in that it reveals a critical "we-they" paradigm in the mind of Juror No. 5. The juror is sending congratulations to Mr. Cogdell (as an implied fellow Texan), notes that he and his client "left those NY lawyers choking in your dust," and even credits him for not "over-coach[ing]" his client.[18] The email also addresses Mr. Cogdell by his first name, a form of familiar address that reflects a perceived shared home-town status. This "us vs. them" structure is the same sentiment shared by people across the globe when their local team or player is up against the "outsiders," and is a product of the affinity local people feel towards one another. But more significant to the case at hand is Juror No. 5's comment referring to the effort of the "big boys" to move their trial, an unmistakable reference to Skilling and Lay, coupled with the closing "DON'T MESS WITH TEXAS!" Juror No. 5's language and tone indicates that he decidedly places Skilling and Lay on the "they" side of the field, viewing them in a wholly different (and decidedly more unfavorable) light than he views Ms. Kahanek and Mr. Cogdell. Although anecdotal, this email confirms my view that the Barges trial simply is not comparable to the upcoming trial in this case – the perceptions of potential jurors about Messrs. Skilling, Lay and Causey are very different from their perceptions of the bit players involved in the Barges case (which was at best an opening act to the trial of the "big boys").

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pdf/ juror.pdf.

[18] *Id.*

114. As reported in the Houston Chronicle on November 18, 2004, nine of the jurors from the Barges case went to the Task Force offices in Houston after the trial in order to visit with prosecutors and, in the words of the foreperson, to get "closure."[19] In my experience, this is also highly unusual and reflects a slightly different (but nonetheless equivalent) sense of a "we-they" paradigm between the prosecutors and jurors on the one hand, versus the Enron and Merrill Lynch defendants (other than Ms. Kahanek, of course) on the other hand.

115. Stealth Jurors. Stealth jurors are those who seek to get on a jury by misrepresenting or concealing certain facts or attitudes, often for reasons such as wanting to write a book, to be on Larry King, to be a part of a big case, or even to obtain revenge. Mr. Skilling and his co-defendants argue that stealth jurors are likely to be a problem in this case. The Government disagrees. I have personally encountered stealth jurors from time to time both in cases I have worked on and in the advance sheets. Stealth jurors could be a problem in a high profile case like this one wherever it is tried, but the potential for encountering stealth jurors is much higher in Houston than anywhere because of the high salience of Enron, the damage caused to Houston by Enron's collapse, and the local community's reaction to that damage, among other reasons.

116. Do federal courts move cases because of community bias or biasing pretrial publicity? The

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[19] "Jury finds Enron sham cost $13.7 million," *Houston Chronicle* (Nov. 18, 2004).

Government asserts in its Memorandum at page 5 that, "'[V]ery rarely, and only in extreme cases, is a Rule 21(a) motion to be granted.'" That is true, but the issue here is whether this is one of those extreme cases – and I believe it is. Most of the published cases dealing with venue are appellate decisions in which the issue is whether the trial judge abused his or her discretion in not changing venue. As a result, cases where the trial judge granted the change are rarely published. In my experience, both in federal and state cases, venue motions, while hardly commonplace, are by no means automatically denied. One of the federal cases on which I consulted and testified – and in which the trial judge both granted the change and published his opinion – was in the well-known and widely cited federal Oklahoma City bombing case. In fact, three federal cases on which I have consulted ended up being transferred to another district (the Oklahoma City bombing case; the Carey Stayner-Yosemite Park case; and the David Wittig case, a white collar case with certain parallels to this case). The facts of this case present one of the most compelling arguments for a change of venue as any federal case in which I have been involved.

I declare under penalty of perjury that the foregoing is true and correct, except for those matters stated on information and belief, and as to those matters, I believe them to be true.

Executed on this 19th day of December 2004, at Chico, California.

s/Edward J. Bronson
EDWARD J. BRONSON

## APPENDIX L

# SUPPLEMENTAL DECLARATION OF EDWARD BRONSON IN SUPPORT OF RENEWED MOTION TO TRANSFER VENUE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff,<br>v.<br>JEFFREY K. SKILLING and RICHARD A. CAUSEY, and KENNETH LAY,<br>Defendants. | ) | Crim. No. H-04-25<br>(Lake, J.) |

## DECLARATION OF EDWARD BRONSON, PH.D., IN SUPPORT OF DEFENDANTS' RENEWED MOTION FOR CHANGE OF VENUE AND RELATED RELIEF

I, Edward J. Bronson, declare as follows:

1. I am a Professor Emeritus of Political Science at California State University, Chico. I have previously submitted two declarations in this case, including my qualifications and curriculum vitae. Those declarations were in support of defendant Jeffrey Skilling's motion to transfer venue, and I have now been asked to review the venue issue in light of subsequent developments in the case.

2. I have been studying and doing research on pretrial publicity for over 35 years. I have published and presented research papers at various academic and professional meetings; authored the chapters on venue and pretrial publicity in California Criminal Law Procedure & Practice, now in press for the 2006 edition, published under the auspices of the University of California and the State Bar of California, and widely used by lawyers and judges; done pretrial and post-conviction publicity analysis work for attorneys involved in hundreds of cases; made recommendations about the need for a change of venue or other remedy in many cases; developed, conducted, and evaluated surveys to measure the extent and nature of pretrial publicity; qualified and testified as an expert witness on change-of-venue motions in more than 100 cases, testifying in person 96 times (including two cases in Texas, one motion denied, the other granted) and 13 times by affidavit; submitted several additional affidavits in post-conviction proceedings where the issue involved possible prejudicial pretrial publicity; and testified several times on the need to close various hearings

(preliminary, competency, and venue) in high-profile cases.

3. Either as expert or consultant, I have recommended *against* a change of venue in 145 cases (11 times in testimony) and *in favor* of a change of venue 105 times.

4. I have testified or consulted on the venue issue in such well-known cases as United States v. McVeigh (the Oklahoma City bombing); Oklahoma v. Nichols (the state's recent prosecution for the bombing); People v. Richard Allen Davis (the Polly Klaas case); United States v. Kaczynski (the Unabomber case); the San Francisco dog mauling case; the John Walker Lindh case (the American Taliban); the case of one of the men charged with the African embassy bombings; the Orange County, California bankruptcy proceedings; United States v. Cary Stayner (the Yosemite Park murder case); lawsuits arising from the UAW-Caterpillar Tractor strike in Peoria, Illinois; and other well-known cases, many in federal courts around the country. In some of those cases, such as the Unabomber and the American Taliban, I recommended against the need for a change of venue, despite the very high profile of those cases.

5. In this declaration I will focus on two major points:

a. Part I: The current status of possible juror bias in the Houston area jury pool, as measured by responses to jury questionnaires[1], and whether that level of bias indicates the need for a transfer of venue out of the Houston Division.

b. Part II: A consideration of whether the fair trial rights of the defendants can be adequately protected by standard federal voir dire.

## I. Juror Bias in the Houston Area Jury Pool.

6. Counsel sent me the following materials to review, which I understand are governed by a protective order, with which I intend to fully comply in handling these materials:

a. 280 jury questionnaires that I am told were provided to counsel for the parties by the Court;

b. Typed copies of the jurors' responses to the open-ended questions in the questionnaire.

c. Other data from the responses that were included in defendants' renewed venue motion.

7. Ultimate Conclusion: After reviewing the material above, and considering the materials I reviewed in connection with my first two declarations in this matter, ***I have come to the conclusion that the extent and depth of bias shown in these questionnaires is the highest or at least one of the very highest I have ever encountered***. Excluding the jurors who gave

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[1] I have briefly reviewed the relevant publicity over the past year, and note that it has only somewhat abated.

responses to the jury questionnaire that either seriously casts doubt on their ability to be fair or may raise questions about their ability to be fair, there are ***only 18 jurors*** among the 280 remaining -- hardly a cross-section of the Houston community.

8. I will review some of the data that support my opinion.

9. The Closed-End Responses. The recognition rate (Q41) remains very high at 86.4%. Almost half the prospective jurors (42.1%) are angry about what happened at Enron (Q67). A large number of panel members have opinions about Kenneth Lay (41.8%, Q70a) and Jeffrey Skilling (33.6%, Q70b), and a perusal of the comments shows that these opinions are uniformly negative.

10. A series of questions, 35, 36, and 37, deal with the financial impact on the prospective juror, family members, or friends of the collapse of Enron. Responses show that 20% of prospective jurors, their family members, or friends owned Enron stock (Q35), 31.4% knew someone who lost money in an investment because of the Enron bankruptcy (Q36), and 17.5% of panel members, their family, or friends had been damaged by the Enron bankruptcy or layoffs (Q37).

11. On guilt, 41.1% have an opinion about the guilt or innocence of Kenneth Lay (Q71c) and 38.6% have such an opinion about Jeffrey Skilling (Q71b). *Unfortunately, the instructions at the beginning of the questionnaire tend to reduce these numbers beyond what they probably are.* Prospective jurors were instructed that the judge and lawyers wanted to select jurors who could be "fair and impartial." For those who are familiar with the

maxims about the presumption of innocence, a few prospective jurors will have felt some pressure to give what has been termed the "good-citizen response." They were also told: "We are confident that you will not try to avoid your duty as a citizen to serve." Those who express opinions on guilt may be considered by some panelists to be shirking that duty. Indeed, my experience has been that guilt percentages obtained in court either through jury questionnaires or voir dire are substantially lower than what is found in anonymous community surveys.

12. Question 72, moreover, likely led more jurors not to express negative opinions than actually hold them. The question is highly leading and asks:

> Notwithstanding the instructions that the judge will give you at the trial, would any opinion you may have formed regarding Enron or any of the defendants prevent you from impartially considering the evidence presented during the trial?

13. The kind of pressure these potential jurors would feel to give good-citizen responses is illustrated by what juror number 242 said: "I hate to say it, but I cannot imagine how my personal involvement through Mariner Energy could not influence my involvement." (Emphasis mine.) This person did reveal his bias, but felt guilty about doing so, given the nature of what he had been told his civic duties were. Others with somewhat less fortitude may not have "admitted" their own bias.

For example, another potential juror apparently succumbed, writing, "Although my current belief is Ken Lay is a crook, I believe I could be a fair and impartial juror . . . ." (376).

14. Despite the leading nature of this question, and the effect of the original instructions, 42.5% of these prospective jurors said either that their opinion would prevent them from being impartial (18.6%) or were unsure about their ability to be impartial (23.9%). Of course, over half (57.5%) said they thought they could be impartial, *but that no doubt significantly overstates what they would in fact be able to do.* As one potential juror (211) concluded, "I have never served on a jury that I knew anything about the case (beforehand). I am unsure that a formed opinion would interfere with determining guilt or innocence of those involved."

15. This is not to say that these people were dissembling -- all or most of them likely honestly believe they can be impartial. But as one jurist and Alexander Pope observed, "To expect a juror to confess prejudice is not always a reliable practice. A juror can be completely honest in denying prejudice. In the words of Alexander Pope, 'All looks yellow to the jaundiced eye.'" (State v. Shawan (1967) 77 N.M. 354, 358). Decades of social science teach that most people have great difficulty identifying their own prejudices, and even among those who do, all but a few underreport their existence and overestimate their ability to control them.

16. Indeed, given the community attitudes present in this venue, a finding of guilt for these defendants may seem like a perfectly fair and

impartial verdict despite the evidence presented at trial.

17. The Cumulative Impact of Various Sources of Prejudice and Disqualification. To this point, my report has identified some of the various indicia of prejudice among the jury pool in this case. In addition, I cross-tabulated the responses, using a computer to determine the cumulative impact of excusing each juror that has evidenced actual or potential bias. Those results are shown in Table 1 (next page), which I have titled "Hierarchy of Prejudice: Panelists Evidencing Potential Bias." In this cross-tabulation process (and to avoid double counting), once a respondent was eliminated based on evidence of bias, that person was eliminated from the pool. For example, while we know that 20% of the pool members or their family or friends have owned Enron stock (line 6 of Table 1), that factor only called for the excusal of two additional people because other answers these jurors gave were even stronger evidence of bias, and I had already eliminated all but of these jurors from the pool.

**Table 1—Hierarchy of Prejudice: Panelists Evidencing Potential Bias**

| Question | Jurors Excluded | % of Remaining Jury Pool Excluded | Cumulative % of Jury Pool Excluded |
|---|---|---|---|
| Have opinion that would prevent impartial consideration of evidence | 120 | 42.9 | 42.9 |

| | | | |
|---|---|---|---|
| regarding Kenneth Lay and/or Jeffrey Skilling (Q72a and 72b)* | | | |
| Angry about what happened with Enron (Q67) | 41 | 25.6 | 57.5 |
| Have opinion about Kenneth Lay and/or Jeffrey Skilling (Qs70a and 70b) | 18 | 15.1 | 63.9 |
| Potential juror, relatives or friends ever worked for Enron (Q33) | 11 | 10.9 | 67.9 |
| Potential juror, relatives or friends ever did business with Enron (Q34) | 2 | 2.2 | 68.6 |

| | | | |
|---|---|---|---|
| Potential juror, relatives or friends ever owned stock in Enron (Q35) | 2 | 2.3 | 69.3 |
| Knew someone who lost job or money in an investment, IRA, 401K, or other retirement plan as a result of the bankruptcy of Enron (Q36) | 11 | 12.8 | 73.2 |
| Potential juror, relatives or friends employed by company affected by the Enron bankruptcy or Enron layoffs (Q37) | 1 | 1.3 | 73.6 |
| Potential juror, | 1 | 1.4 | 73.9 |

| | | | |
|---|---|---|---|
| relatives or friends ever worked for Arthur Anderson (Q32) | | | |
| Heard or read about Enron cases (Q41) | 55 | 75.3 | 93.6 |

* Also includes those unsure about being impartial. Note: All 120 potential jurors in this group also have an opinion about guilt or innocence of Kenneth Lay and/or Jeffrey Skilling (Q71c and 71b).

18. At the top of the list in Table 1, and most dangerous, are those who state that their opinion would prevent impartial consideration of the evidence regarding one or both of the defendants or who were unsure whether they could be impartial. Table 1 shows that eliminating those potential jurors excludes 42.9% of the pool. Given the leading nature of the instructions to the questionnaire and to question 72 and the social desirability of giving the "correct" good-citizen response, there are surely others whose commitment to and ability to be fair is of concern.

19. After excluding the 120 panel members who cannot even claim they would be impartial, we move to the next row, those who are angry about Enron. That answer would lead one to exclude (or be seriously concerned about) another 41 potential jurors. We would then have identified and possibly excluded 57.5% of the pool. Moving through the next problematic questions and answers in Table 1, listed

in rough order of indicia of bias, by the time we get through all but the last row, we have identified as likely biased or problematic almost three-fourth of the entire pool (73.9%). The last row adds those who have not answered one of the previous questions in a way that seriously casts doubt on their ability to be fair, but for whom their answer, given the sorts of publicity to which jurors have been exposed, at the very minimum raises significant questions about their ability to be fair. Excluding those 55 individuals who have heard or read about the Enron cases, leaves just 6.4% of the original pool, or 18 potential jurors.[2]

20. Table 1 demonstrates there is a high level of bias. Effective voir dire to identify and eliminate all biases and prejudices will be long and difficult -- with little assurance that those remaining in the jury pool will be free from bias.

21. Comments in Response to Open-Ended Questions. I have reviewed the comments made by potential jurors in response to the open-ended questions in the questionnaire. If time permitted, it would be possible to do a detailed content analysis of

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[2] I have called the result of excluding such a large percentage of the jury pool in high-profile cases "perverse effects," because those few left tend to be not only unrepresentative of the community, but less likely to comport with our ideal of the most desirable juror. Jury Selection in High-Profile Cases: The Perverse Effects of Voir Dire, with R. Ross. California State University, Chico Discussion Paper Series, 1997.

those responses. Instead, I will summarize my overall findings and give just a few examples.

22. ***The breadth and depth of case knowledge shown by these comments was the most I have ever seen***, and those comments often include prejudicial and personalized beliefs about defendants. To cite just a few examples, juror responses advert to: "Ken Lay's friends in government" (108), Kenneth Lay's public denial of any guilt, knowledge, or responsibility (12 and several others), Linda Lay's "moaning about selling some of the $6 million houses in Aspen" (1, 62, 340), "traders commenting on how they were ripping off California grandmothers during the energy crisis there" (18), Andrew and Lea Fastow's travails (221), the timing of Jeffrey Skilling's resignation (119, 157, 162, 377, others), Jeffrey Skilling's Senate testimony (251, 255), the suicide of an Enron executive (317 and others), that one Enron executive awarded the contract to decorate the Enron building to his wife (117), the booking of unearned revenue (263), knowledge of the Nigerian Barges transaction (263), efforts by Enron to hide their debts (264), a whistle blower incident (256), and much else.

23. Certain hostile or negative words appeared repeatedly. Among the 280 prospective juror questionnaires, some of these terms are:

| Word | No. of Times Appearing |
|---|---|
| Greed | 272 |
| Crook | 55 |
| Fraud | 36 |
| Dishonest | 34 |
| Corrupt | 33 |
| Liar, lying, lie | 26 |
| Arrogance, arrogant | 23 |
| Cheat | 16 |
| Conspire | 5 |
| Conceal | 4 |
| Scam | 2 |
| Power (used pejoratively) | 89 |

24. Other loaded terms used one or more times included horror, screwed, ripped off collusion, unethical, stole, cooked the books, collusion, fleeced, criminal, guilty, deceit, manipulated, unconscionable, reprehensible, shame, lives ruined, self-righteous, selfish, hubris, low down scumbag, snake in the grass, lower than snakes, and others. Verbiage of this nature reflects much more than opinions about guilt, but shows strong feelings and entrenched views that will create an overwhelming burden for the defense to overcome.

25. A content analysis of these comments found in Appendix B: Jurors Who Responded Negatively attached to Defendants' Renewed Motion for Change of Venue and Related Relief, page 1, indicates that of the 280 prospective jurors, 224

(80%) expressed negative views or bias in their comments on one or more of the open-ended questions in their questionnaires, a remarkably large number and percentage.

26. Salience to Houston Community. While media coverage of the Enron collapse and its causes was national, the coverage was much more intense, greater, and with a different focus in the Houston area. That is because the Enron collapse had a much more powerful impact locally, in Enron's home base. The extent to which Enron was enmeshed in the lives of this panel, their friends and family is reflected in the comments made by this jury panel in response to some of the open-ended questions. One panelist (132) wrote, "The collapse of Enron flooded the job market in Houston. As a result my wife has had a hard time finding a job. The economy has been damaged here." On the same theme, a prospective juror (229) added, "I feel they caused many people to lose their jobs, which has made it difficult for me to get a job." Another (151) said, "Enron gave Houston a black eye, left many families with no retirement, and sick people had no insurance to continue their health care." This sort of sentiment was no doubt a reflection of the experience of these individuals plus that of their family and friends, but also came from the nature of the media coverage, which heavily focused on the travail of those local workers, retirees, and investors devastated by the Enron collapse.

27. In Question 39, panel members were asked if they had an opinion about the cause of the collapse at Enron, and 60% said they did. In their comments, the focus was on the top executives. The

comments included characterizations such as cheating, greed, graft, and avarice to an extraordinary level, lust for power, corrupt executives, crooked upper executives, criminals, robbed by high ranking officers, conspiracy, collusion, orchestrated fraud, big lie, lying, stealing, ripped off, false accounting, cooked the books, deception, concealed information, deception, anti-social personalities of those in charge, self-serving action of a few at the top, shady dealings, illegality, scheming, arrogance, unethical behavior, manipulation, the guilt of defendants.

28. These are emotionally-laden terms accompanying a strong implication that the executives are guilty or at least directly responsible for the Enron meltdown and scandal. Those attitudes will accompany into the jury box those who serve, despite sincere statements about their fairness. It will be part of the "story model" of the case in their minds.

29. Pretrial publicity leads to the development of a story model, like the idea of an evidentiary prism. The story model has been explored in a variety of recent work on memory. The model provides the means by which negative publicity provides not just isolated fragments of information, but a belief framework about the defendant's guilt. Those exposed to pretrial publicity construct a story to make sense out of a particular event. Once that belief is formed, it is very difficult to dislodge. New information that is consistent with the story is readily absorbed, while inconsistent information tends to be rejected.

30. The story of the case thus becomes the prism through which trial evidence and legal theories will be viewed by jurors at trial. If a story model leads jurors to believe that the defendant is guilty, then the credibility of prosecution witnesses is enhanced, and alibis or other defenses do not ring true. The story model of this case portrays evil and scheming defendants who orchestrated the Enron scandal against the very sympathetic victims -- relatives, friends, and fellow Houstonians -- whose lives were ruined.

## II. Voir Dire.

31. I recommend greatly enhanced voir dire procedures. Standard federal voir dire may work reasonably well in most cases, but the amount and nature of bias in this panel suggests far more is required.

32. It is my experience, and the social science research I and others have conducted teaches, that directing questions to the whole panel on fairness issues is not likely to be productive. Greater insight can be gained by questioning jurors individually, or at least in small panels. For many panel members, especially those whose questionnaire responses are problematic, sequestered voir dire is a much better approach to identify bias. Not only does social science research support individualized, isolated voir dire to encourage forthcoming answers and prevent other jurors from learning what the "correct" responses are, but it avoids contaminating an entire panel.

33. In conducting voir dire, closed-ended and leading questions are useful for obtaining boilerplate

information, but they are far less useful in obtaining the sort of information necessary to expose biases.

34. Research demonstrates that people are more willing to disclose attitudes and other information to people whose status is closer to their own. In the intimidating circumstances of a federal courtroom, jurors see even a relatively low-key judge as a major authority figure, reducing the ability to reveal some biases. Social science research shows that attorney-conducted voir dire is more effective at exposing prejudices.

35. Given the pre-trial publicity in this case and juror prejudices as expressed in public opinion polls and the jury questionnaire responses, it is my opinion that traditional voir dire methods will not adequately expose biases. More robust voir dire, as described above, is necessary in my opinion for there to be a any reasonable likelihood of selecting a jury that might fairly decide this case based solely on the evidence presented at trial. Even if these additional voir dire measures are employed, based on my review of the record, my experience, and in my opinion, it is extremely unlikely that a fair and impartial jury can be selected in this venue.

I declare under penalty of perjury that the foregoing is true and correct, except for those matters stated on information and belief, and as to those matters, I believe them to be true. Executed on this 13th day of January 2005, at Chico, California.

s/Edward J. Bronson

# APPENDIX M

# AFFIDAVIT OF DICK DEGUERIN

## AFFIDAVIT

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME. the undersigned authority. on this day personally appeared Dick DeGuerin, who was by me duly sworn, and upon oath says:

"My name is Dick DeGuerin. I am a lawyer.

I have practiced law in Harris County since 1965. My practice is primarily criminal defense; trial, and appeals, in state and federal court. I was an Assistant District Attorney from 1965 until 1968, a trial lawyer in the firm of Butler, Binion, Rice, Cook & Knapp from 1968 to 1971, an associate with Percy Foreman in the firm Foreman & DeGuerin from 1971 to 1982, and since 1982 I have had my own criminal defense firm.

"I am a member of a number of organizations having to do with the practice of law, among them are:

American Bar Association

American Bar Foundation

American Board of Criminal Lawyers

American Board of Trial Advocates

American College of Trial Lawyers

American Trial Lawyers Association
Association of Trial Lawyers of America
Bar Association of the Fifth Federal Circuit
Harris County Criminal Lawyers Association
Houston Bar Association
Houston Trial Lawyers Association
International Academy of Trial Lawyers
International Society of Barristers
National Association of Criminal Defense Lawyers
State Bar Association
Texas Bar Foundation
Texas Board of Trial Advocates
Texas Criminal Defense Lawyers Association
Texas Trial Lawyers Association.

D.D.

"I am admitted to practice before the United States Supreme Court, several United States Circuit Courts of Appeal including the Fifth Circuit, all of the federal district courts in Texas, and the Texas State Bar.

"I have been involved in selecting juries for serious criminal trials since 1965. I have been asked to express an opinion concerning the case of *United States vs. Lay and Skilling* regarding venue in the Southern District of Texas. In reviewing material to express this opinion I have been furnished summaries of juror information questionnaires.

"In addition, I have paid fairly close attention to the development of the "Enron Cases." I have read several books regarding the Enron matters and frequently hear the 'Enron Cases' discussed. From my own experience I know that the 'Enron cases' are a frequent subject of conversation in the Houston area.

"From my review of the juror questionnaire summaries I believe it would not be possible to select a jury in Houston, Texas, with any degree of assurance that the process would not be tainted by strong feelings antagonistic to the defendants. I say this not because it would be impossible to find twelve fair people, but because I believe the process of selecting the jury would be so impaired by the strong opinions held by many people that the Court could not insure the litigants that a fair jury could be had.

"In my experience I have never seen the type of vituperative responses and opinions expressed by eighty percent of the large jury panel (according to the information I have received) as are present in this case. The nature of the responses, the strong feelings indicated by those responses, and the pervasiveness of those responses indicate to me, in my opinion, that the case must be moved for trial elsewhere.

"I have personal knowledge of the statements contained herein and they are true and correct."

s/Dick DeGuerin
Dick DeGuerin

SUBSCRIBED AND SWORN TO before me by Dick DeGuerin on the 11th day of January 2006.

s/Barbara L. Smith
Notary Public in and for
The State of Texas

# APPENDIX N

# AFFIDAVIT OF RICHARD HAYNES

STATE OF TEXAS )
)
COUNTY OF HARRIS )

## AFFIDAVIT OF RICHARD HAYNES

Before me, the undersigned authority, on this day personally appeared, Richard Haynes, who by me being duly sworn, deposed and stated as follows:

My name is Richard Haynes. In April 2006, I will have been licensed and privileged to practice law in Texas for 50 years. I am admitted to the United States Supreme Court, the Fifth Circuit Court of Appeals, the Ninth Circuit Court of Appeals and the United States District Courts of Texas, Southern, Eastern, Western and Northern Divisions.

I have selected juries in criminal trials, federal and state courts from Florida to California, many of the United States District Courts and the State Courts of Texas. I have read published books and articles on jury selection, have personally lectured on jury selection, and attended many seminars on jury selection.

I have been requested to render an opinion on the accused Skilling and Lay's Motion for Change of Venue, Request for Additional Juror Questionnaires, Request for Modification of the Voir Dire Process, and Request for Additional Time to Prepare in Light of the Recent Plea of Mr. Causey.

I have reviewed the motion and the juror questionnaire summaries.

In view of the tremendous impact of the fall of Enron and the ongoing media coverage, I am not surprised that some 80% of the prospective jurors demonstrated such strong feelings, vehement anger and hostility toward the accused.

The community has such strong feelings against the accused, feelings which are likely to become, even stronger given the media coverage of the plea of Mr. Causey, that no court, no matter how careful and precise the voir dire is conducted, or no matter who conducts voir dire, will be able to select a jury unaffected by the strong feelings and bias against the accused. Our law provides a remedy for the type of configuration of facts and media coverage. The law provides, that the court can order change of venue. In my professional opinion, this is a case which warrants a change of venue.

s/Richard Haynes
RICHARD D HAYNES

SWORN and SUBSCRIBED TO by Richard Haynes, on this 13th day of January, 2006, to certify which, witness my hand and seal of office.

s/Jayne Leigh Gehret

## APPENDIX O

## DECLARATION OF STANLEY SCHNEIDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | §<br>§<br>§ | CR-H-04-25 (S-2) |
| JEFFERY K. SKILLING, and KENNETH L. LAY | §<br>§<br>§ | |

### EXPERT DECLARATION IN SUPPORT OF DEFENDANTS' RENEWED MOTION FOR CHANGE OF VENUE AND RELATED RELIEF

1. My name is Stanley G. Schneider. I am of legal age. I am in all ways competent to make this affidavit, and have personal knowledge of all facts recited herein. I am attorney licensed to practice law in the State of Texas by the Supreme Court of Texas. I have been licensed since 1974. I am board certified in criminal law by the Texas Board of Legal Specialization. I frequently speak at continuing legal education seminars throughout Texas: In 1997, I was selected by the State Bar of Texas, Criminal Justice Section, Outstanding Criminal Defense Lawyer. I received the President's Award, Texas Criminal Defense Lawyer's Association in 2003. I am - recognized in

Criminal Defense by Best Lawyers in America, for 2004 and 2006, I was President, Harris County Criminal Lawyers Association 2004-2005. I am currently the Treasurer, Texas Criminal Defense Lawyers Association, 2005-2006

I have been involved in a number of high profile cases both on appeal and in trial such as: Claude Wilkerson, a man who spent seven years on death row convicted of three murders and is now a free man after the suppression of all evidence in the case; Vernon McManus, a death row inmate who is now free after reversal of conviction; Wanda Holloway, charged with the solicitation of capital murder who has become known as the "Cheerleader Mom"; Patricia and C.W. Smith, United States District Court in Atlanta, defense of a "Rico" law suit based upon the action of their son who took custody of his children in violation of a court order. I successfully defended Patricia Smith on criminal charges in Texas for interference of child custody, and Chuck Smith, charged with interference with child custody; Richard Minns, charged with federal passport fraud violations; Ricardo-Aldape Guerra, working with Scott Atlas, was convicted of capital murder and after fifteen years on death row the charges were dismissed because of the suppression of the in-court identification of a number of witnesses that were tainted by police and prosecutorial misconduct; Victor Saldaño, working with Scott Atlas, convicted of capital murder. Reversed opinion by the Court of Criminal Appeals in the Supreme Court of United States. Sentenced to death based on testimony stating that his race could be considered in answering the question regarding Mare dangerousness. A new punishment hearing was ordered by Federal District Court; Robert Angleton, acquitted by a State jury of capital murder charges after being accused of hiring his brother to kill his wife; Fitzroy Webb, a Jamaican charged in federal court with possessing marijuana in McAllen, Texas. Acquitted by a jury upon an argument that the venue was improper; Charles Forshee, a former foster parent accused by the victim's four year old brother of smothering the two year old victim in his care. Forshee was acquitted of murder charges.

2. I have followed this case closely and tried to stay abreast of the local media coverage. I have reviewed the defendants' venue motion and the answers to the questionnaires.

3. I was shocked by the animus exhibited by the answers of venire members in this jury pool.

4. The only possible way that a fair jury can be selected is with individual voir dire conducted by the lawyers involved in the case. I do not believe that the Court's voir dire, no matter how extensive could effectively remediate these problems for a number of reasons; there are so few unbiased jurors in the pool, any fair jurors selected will face enormous pressure to convict given the community hostility toward the defendants and the jurors inability to express unconscious biases due to the incredible attention the Houston media is paying to the prospective jurors. Additionally, this pool has been tainted by the guilty plea of a co-defendant after the questionnaires were prepared and distributed.

5. It is my belief that the Defendants can not get a fair trial with this jury panel given their outspoken hostility and prejudice. It may be impossible for the Defendant to get a fair and impartial jury in the Houston Division of the Southern District of Texas.

s/Stanley G. Schneider
Stanley G. Schneider
SBN 17790500
440 Louisiana, Suite 2110

Houston, TX 77002
713-951-9994 (Telephone)
713-224-6008 (Facsimile)

STATE OF TEXAS §
COUNTY OF HARRIS §

BEFORE ME THE UNDERSIGN AUTHORITY, on this day, personally appeared a person known to me to be Stanley G. Schneider and who, after being during sworn, did depose and state on his oath that all facts set forth in the foregoing Declaration are true and correct. Signed and dated this the 11th day of January 2006.

s/Lani L. Corona-Conrad
Notary Public
State of Texas

# APPENDIX P

## EXCERPTS TRANSCRIPT OF JURY TRIAL

## UNITED STATES OF AMERICA v. JEFFREY K. SKILLING AND KENNETH L. LAY

[3]

**[THE COURT]** Good morning, ladies and gentlemen. Welcome to federal court. My name is Sim Lake. I'm one of the federal judges who preside here in Houston. All of us appreciate your patience and your cooperation for the last few months and especially this morning. We know you got up very early to be down here at 7:00 o'clock, and we appreciate it.

Today we are going to select 12 jurors and 4 alternate jurors in the case of United States of America versus Jeffrey Skilling and Kenneth Lay. I can assure you, those of you who are selected, that this will be one of the most interesting and important cases ever tried.

I estimate that the case may take up to four months to try, but it will probably require less time. That is substantially less time than we originally estimated when we sent you the questionnaires. At that time, we estimated four to six months.

We all know that serving on a jury for this length of time will require a substantial investment of your time and intellect. We all know that the evidence in this case may be complicated at times. And we all also know that jury service may interfere with your jobs and your personal lives. But that would be true of anyone who were selected to serve as a juror.

On the other hand, we have some of the

[4]

finest lawyers in the United States trying this case. And all of them will endeavor to present the case as efficiently and in the most interesting manner as possible in order to win your support for their clients. Likewise, I can assure you that I will not waste anyone's time and I will rigorously guard your time.

The process of jury selection is known as the voir dire examination of the jury panel. Although we sometimes call this process jury selection, that term is really a misnomer. A more accurate term would be to call the process a process of potential juror elimination.

Each of you is qualified under the law to serve as a juror in this case. The way we arrive at the actual jury is through a process of elimination. Each side is allowed to exercise a certain number of peremptory challenges by which a certain number of potential jurors can be excused. The lawyers do not need to explain their reasons for using a peremptory challenge against a potential juror.

In addition, each side can challenge any number of jurors for cause. A challenge for cause is an argument directed to me. The lawyer argues that that potential juror, if he or she were actually selected, could not be fair and impartial. If I agree, I excuse that potential juror. If I disagree, that potential juror

[5]

remains on the panel, subject to being excused for -- with a peremptory challenge.

I just used a very important term, and I want to back up and explain that term for you. That term is "a fair and impartial juror." What I mean by "a fair and impartial juror" is a juror who will base his or her decisions in this case solely on the evidence admitted during this trial and who will follow my instructions concerning the law. This definition of "a fair and impartial juror" necessarily means that such a juror will not be influenced by any preconceived notions about criminal cases in general or about this particular case.

Likewise, a fair and impartial juror will not be guided by his or her own ideas about what the law is or about what the law ought to be. Instead, a fair and impartial juror will conscientiously follow my instructions concerning the law.

Now, let me explain to you how this process of jury selection will work this morning. First, I will tell you a little bit about the case and introduce to you the parties and the lawyers. Then I will explain to you some important rules of criminal and constitutional law. Finally, I will ask you some questions based on the questionnaires that you have submitted.

This is a criminal case. The defendants are

**[6]**

Mr. Jeffrey Skilling and Mr. Kenneth Lay.

Mr. Skilling, would you please stand.

Mr. Lay, would you please stand.

Thank you. You may be seated.

We've already asked you about your knowledge about Mr. Lay and Mr. Skilling in your questionnaires. Mr. Skilling and Mr. Lay are charged in the indictment with a commission of federal crimes. The indictment charges that

Mr. Lay and Mr. Skilling, and other people, conspired to commit securities fraud in connection with the purchase and sale of Enron stock and that they committed wire fraud by defrauding Enron, its shareholders, and others of the intangible right of honest services and to obtain money and property by means of materially false and fraudulent pretenses.

The indictment also charges defendants with committing securities fraud in filings with the Securities and Exchange Commission and during calls and presentations to stock analysts.

The indictment charges Mr. Skilling with misleading Enron's outside auditors, Arthur Andersen, and with insider trading.

And finally the indictment charges Mr. Lay with violating his duty of honest services by making false and misleading statements to Enron employees.

[7]

Now, let me explain to you what an indictment is and, equally important, what an indictment is not. An indictment is a charge brought by the government against a defendant. It is the document that initiates a criminal case. I instruct you as a matter of law that the indictment is not evidence that the defendant's did any of the acts charged against them in the indictment or that the defendants are guilty of any wrongful conduct.

The indictment against the defendants merely contains accusations, nothing more. It is the formal manner by which a person is accused of a crime and required to stand trial.

Mr. Lay and Mr. Skilling are presumed under the law to be innocent. The presumption of innocence will remain with them until such time, if ever, that the government proves beyond a reasonable doubt that Mr. Lay or Mr. Skilling are guilty of one or more of the charges brought against them in the indictment.

Should the government fail to prove the defendants' guilt beyond a reasonable doubt, you must acquit the defendants; that is, you must find them not guilty. Because the government has the burden of proof, the defendants have no obligation to disprove any of the charges brought against them or to present any evidence at all.

[8]

Likewise, because the government bears the burden of proof, a defendant has the right to remain silent and not testify. Should a defendant elect to remain silent and not testify, you should not draw any adverse inference from that decision because the defendant is merely doing what the Constitution and laws of the United States give him the right to do; require the government to prove his guilt beyond a reasonable doubt.

Now, let me ask you: Do any of you have any reservations about your ability to conscientiously and fairly follow these very important rules?

Quickly to summarize them, the rules are: The indictment is not evidence of guilt or any wrongdoing; the defendants are presumed to be innocent; the government must prove the defendants' guilt beyond a reasonable doubt; and the law does not require a defendant to prove his innocence or produce any evidence at all.

If any of you have doubts about your ability to conscientiously and fairly follow these very important rules, would you please raise your right hand now.

One hand. Would you please come forward, sir, and let me talk to you at the bench.

All right. Another hand. Would you both come forward, please.

(The following was had at the bench)

**[9]**

Q. **[THE COURT]** Will counsel please come forward, one counsel per party.

If the jurors would just go down there to Room Number 132 and 255.

All right. Juror 132, would you please come forward.

I'm going to refer to you by number instead of name. Tell me why you have some doubts about your ability to conscientiously and fairly follow those rules?

A. **[JUROR 132]** Everything I've read in the paper is -- and books and stuff, I just think -- I don't think I could be fair.

I also think this would be a burden on my family. I'm an independent designer. I understand that this is -- it will bankrupt my family if I have to stay.

Q. You know we'll pay you $40 a day and then $50 a day after 30 days?

A. I know, but I am the business, and if I have to not work, then I don't get paid.

Q. It's going to be inconvenient for everybody, and it's going to be financially burdensome for most people. And I want to separate out and find out -- I don't want you to use what you've read in the media as an excuse to avoid serving as a juror because of financial

**[10]**

burden. But if you really feel that you've formed some opinions, then you probably couldn't be fair and impartial. What have you read about the case?

A. I've read everything. I just read everything.

Q. Have you reached some conclusions?

A. I just think they knew exactly what they were doing when they were doing it.

Q. What do you base that on?

A. Just depends.

Q. Well, did you hear me that the defendants are presumed to be innocent?

A. Yes, I did.

Q. Could you follow that instruction?

A. I don't know. I don't know.

Q. What is the last article you read about the case?

A. I don't know. I couldn't recall. I just -- I just remember reading everything else. Articles.

Q. In your questionnaire, you have a friend who works for Arthur Andersen. Michael Manley, is that his name?

A. Yes.

Q. And has he told you anything about the case?

[11]

A. No.

Q. Did he work on the Enron account?

A. I'm not sure.

Q. You also indicated that you knew several people who worked for Enron subsidiaries and that one of them lost their job when Enron collapsed. Did any of these people tell you anything about the collapse of Enron?

A. Just what they experienced.

Q. Did they say anything about Mr. Lay or Mr. Skilling?

A. No.

Q. Did they say anything about the wrongdoing by anyone?

A. I can't say that.

Q. You said in response to one question that you didn't work for Creative Edge which did work for Enron. Did you lose any money from the collapse of Enron?

A. Not me personally, but I know people who did. I know they did a lot of work for Broadband.

Q. You say that Karen Hunter lost her job because of the collapse of Enron?

**[12]**

A. Uh-huh.

Q. And she has had trouble finding good employment since then. Has she mentioned things to you about the collapse of Enron?

A. No. She just said she lost her job because of it.

Q. Is "The Houston Chronicle" your primary source of information?

A. Yes.

Q. Do you recall any particular articles about Mr. Lay or Mr. Skilling?

A. Not that I'm aware.

Q. Well, you said in your response to one question that "Mr. Skilling is a member of our club" and that you met Mr. Lay at your child's birthday party. With that relationship with them, don't you think you could be fair?

A. I don't know. I don't think so. I honestly don't know.

Q. What makes you think they're guilty?

A. I just think the positions as high as they are, they own the company, they run the company, they knew exactly what they were doing.

**[13]**

Q. And you think that the defense would have to disprove that idea in your mind in order for you to find them not guilty?

A. I believe so.

Q. In other words, you start out assuming they're guilty, and it's up to the defense to disprove that charge?

A. I mean that's just my opinion.

Q. Mr. Stricklin, do you have any questions?

A. **[MR. STRICKLIN]** Nothing at this time, Your Honor.

Q. **[THE COURT]** Why don't you stand right over there, sir.

A. **[MR. RAMSEY]** Your Honor --

Q. Just a second. I'm going to have to do this in the way that I want to do it.

I think Juror Number 132 probably needs to be excused for cause, and unless I hear new cogent reasons from the government, I'm going to excuse him for cause.

A. **[MR. STRICKLIN]** No disagreement, sir.

Q **[MR. PETROCELLI]** Your Honor, in your description of the charges to the jury, you indicated that Mr. Skilling was charged with wire fraud. That's been dismissed --

[14]

A. **[THE COURT]** Well --

Q. -- when you signed the order.

A. Well, nobody is going to remember that.

A. Okay. Just for future reference.

Q. 255, would you please come up, sir.

Tell me, sir, why you think you could not be fair and impartial?

A. **[JUROR 255]** I followed this bankruptcy fairly closely in the media, and I formed very strong opinions based on what I saw and read. I would dearly love to sit on this jury. I would love to claim responsibility, at least 1/12 of the responsibility, for putting these sons of bitches away for the rest of their lives.

Q. **[THE COURT]** Are you -- what do you do for a living, sir?

A. I'm a machinist.

Q. Has some -- has a friend or family member suffered because of the fall of Enron?

A. No, sir.

Q. Do you remember anything particular that you've read about the case?

A. I watched a video last night called the "Smartest Guys in the Room," and I remember a few items

**[15]**

from that.

Q. Do you think -- you told -- you heard what I said with the presumption of innocence. Do you think it will be the defendant's burden to disprove the guilt?

A. Absolutely.

Q. All right. Go ahead and stand over there, please, sir.

All right. I'm going to excuse --

A. **[MR. STRICKLIN]** Your Honor, with sufficient time, I probably could rehabilitate him.

Q. **[THE COURT]** Yes, in about a week.

255 is excused.

Now, let me tell you something. Just a minute here. Got too many pieces of paper. A citizen called in this morning to relate a conversation she overheard in a restaurant. This is the message she left. I've redacted her name because you don't need to know that, but you do need to know the information.

And let me just tell you the way we're going to do this. I am going to -- when we get to the individual questions -- don't read that now. Listen to me.

I'm going to bring them up in groups of 12 and ask them individual questions. And then after each 12, I'm going to ask you if there are any challenges for cause, and we're

**[16]**

going to move that 12 into the next room. You're going to bring the next 12. So we'll probably bring everyone at the bench.

A. **[MR. RAMSEY]** Your Honor, I would request two things: Number one, that the Court be very, very sensitive to meeting the witness or --

Q. I let that juror go because I assume he was going to be unfair, and I was going to excuse him anyway.

A. I'm talking about 132, Your Honor.

When the Court looks somebody in the eye and says, "Couldn't you be fair" --

Q. Mr. Ramsey, do you have anything else? I've read everything you said. I'm prepared to move along. I don't want to hear the same thing again.

A. Your Honor --

Q. Have a seat.

A. -- if the Court would ask a question that I have to object to.

Q. Oh, excuse me. Come up here, please, ma'am.

A. Your Honor, if the Court asked a question --

Q. Jane, bring me 254 out of the basket, please.

**[17]**

Just a second. Let me get your questionnaire. You're sort of high on the list.

Ma'am, would you tell me why you don't think you could be fair and impartial?

A. **[JUROR 254]** I did ask you in advance, but I don't think I could sit in a court panel for four months because of a condition. I've suffered from a herniated disk with prescribed pain medications, and there's times I'm not alert. And I really don't think it would be fair for me to sit on the jury panel with that type of condition. I'm supposed to be having surgery in the future.

A. **[THE COURT]** It's doubtful that you will be selected, so why don't you go have a seat. I don't think we're going to get to you anyway. Thank you.

Q. **[MR. PETROCELLI]** Two quick things: Our records show that 24 is out of the pool because she didn't show up.

A. That's right.

Q. Okay. So we can cross her off the list?

A. That's right.

Q. And, secondly, Judge, are you going to, when you bring them up by 12, perhaps question them whether they've heard anything about Causey without mentioning anything --

A. I have a whole serious of

[18]

questions. You'll see what they are, and I think you'll be satisfied with them. Now, have a seat.

A. Thanks.

Q. **[MR. RAMSEY]** Your Honor --

A. **[THE COURT]** Have a seat, Mr. Ramsey. I'm not going to say it again.

Q. I have other things to say for the record.

A. I'll give you the appropriate opportunity.

(The following was had in the presence of the jury panel)

Q. **[THE COURT]** All right. I appreciate the candor of those three potential jurors.

Now that I've told you a little bit of what the case is about, let me tell you what this case is not about. Many people have friends or family members who worked for Enron or who have worked for people who did business with Enron and who are adversely affected by the bankruptcy of Enron and its substantial downsizing.

This case is not intended to address the damages suffered by former employees of Enron or by others because of the collapse of Enron. There are other pending civil and administrative actions designed to remedy those issues. The purpose of this case is to decide whether Mr. Lay or Mr. Skilling violated the criminal laws of the

United States.

We are looking for jurors who can conscientiously and fairly decide whether the government can prove that either defendant is criminally responsible. We are not looking for people who want to right a wrong or to provide remedies for those who suffered from the collapse of Enron.

By the same token, we are not looking for people who wish to serve on this jury in order to punish anyone or in order to seek vengeance against Enron's former officers because of some wrongdoing they believe Enron or its officials may have committed. If that is your reason for wanting to serve on this jury, you could not be a fair and impartial juror. The bottom line is that we want 16 jurors who, although they do not relish being selected as jurors for a four-month trial, nevertheless view jury service as their civic responsibility and who will faithfully, conscientiously and impartially serve if selected as jurors.

Now, let me introduce to you the lawyers in this case. The government is represented in this case by the United States Department of Justice, in particular by Assistant United States Attorneys Sean Berkowitz, who is now standing; John Hueston; Kathryn Ruemmler; and Cliff Stricklin. They will be presenting the evidence on behalf

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of the government.

Do any of you ladies and gentlemen know Mr. Berkowitz, Mr. Hueston, Mr. Stricklin or Ms. Ruemmeler? If so, please raise your right hand.

Have any of you had any dealings with them?

A. Again, I see no hands.

Q. Let me ask one of the four of you to introduce any other task force members who may be up here at the front of the courtroom.

A. **[MR. STRICKLIN]** Yes, Your Honor. With us this morning at counsel table is Special Agent Jill Odom. She is a special agent with the FBI. And we have some other attorneys we brought with us this morning to help with the presentation of evidence in the case: Mr. John Drennan, Doug Bolton, Mr. Leo Wise, and Mr. Ron Adkins.

Q. **[THE COURT]** Thank you.

Do any of you ladies and gentlemen know the lady with the FBI or any of the other attorneys who were just introduced to you?

A. **[THE COURT]** I see no hands.

Q. Have any of you ladies and gentlemen had any dealings with the Enron task force?

A. Again, I see no hands.

Q. Have any of you ladies and gentlemen had any dealings with the United States Attorney's Office for the

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Southern District of Texas? If so, would you please raise your right hand.

A. Again, I see no hands.

Q. The defendant, Mr. Skilling is represented by his attorneys, Mr. Daniel Petrocelli, who is now standing.

A. **[MR. PETROCELLI]** I am now.

Q. **[THE COURT]** Mr. Randall Oppenheimer, Mr. Mark Holscher, and Mr. Matthew Kline.

A. And --

Q. Just a minute. They are all with the law firm of O'Melveny & Myers. And Mr. Skilling is also represented by Mr. Ronald Woods who is now standing.

A. **[MR. WOODS]** Good morning.

Q. **[THE COURT]** Do any of you know Mr. Petrocelli, Mr. Oppenheimer, Mr. Holsher, Mr. Kline or Mr. Woods?

A. **[THE COURT]** I see no hands. Thank you.

Q. Have any of you had any dealings with the law firm of O'Melveny & Meyers?

A. I do not see any hands.

Q. Mr. Petrocelli, is there anyone else at your table you wish to introduce?

A. **[MR. PETROCELLI]** Thank you, Your Honor. Ms. Amber Sayle, a member of our legal team, and Ms. Raiko Heisuko.

**[22]**

Q. **[THE COURT]** Do any of you know either of those two ladies?

A. **[THE COURT]** I see no hands. Thank you.

Q. The defendant Mr. Lay is represented by attorneys Michael Ramsey and Chip Lewis, who are now standing.

And by Mr. Bruce Collins of the law firm of Carrington, Coleman, Sloman & Blumenthal, and by Mr. Max Secrest of the law firm of Bennett & Secrest.

Do any you know Mr. Ramsey, Mr. Lewis, Mr. Collins or Mr. Secrest?

I see one hand. Yes, ma'am. Please stand and tell me your name and number.

A. **[JUROR 64]** Juror Number --

Q. Not your number. Just your name.

A. Dana Fernandez.

Q. Pardon me?

A. Dana Fernandez.

Q. No. Not your name, just your number.

A. 64.

Q. And whom do you know?

A. Almost the whole staff there.

Q. How do you know them?

A. I work in the criminal courts.

**[23]**

Q. All right. Would the fact that you know these gentlemen prevent you from being a fair and impartial juror as I've defined that term?

A. No.

Q. Thank you very much.

All right. You may be seated, gentlemen. Have any of you ladies and gentlemen had any dealings with the law firm of Carrington, Coleman, Sloman & Blumenthal?

A. **[THE COURT]** I do not see any hands.

Q. **[THE COURT]** Have any of you ladies and gentlemen had any dealings with the law firm of Bennett & Secrest?

A. I do not see any hands.

Q. I am now going to read to you a lengthy list of some of the people who may be called as witnesses in the case. It's a long list. And after I finish reading it, some of you may doubt the accuracy of my estimate concerning the length of the trial. But let me assure you, these are all of the people that the lawyers have indicated might be called. It is doubtful that most of these people will actually be called as a witness.

When I read these names, if you recognize any of these people, I want you to please raise your right hand. Now, this list does not include former employees of Enron, of Arthur Andersen, or members of the law firms who

**[24]**

may be called as witnesses.

The lengthy questionnaire that each of you already completed asked you if you knew any people who worked for Arthur Andersen or Enron or the attorneys.

Now, I'm going to begin reading these names and if you -- I'm going to pause after each name, and if you recognize the person, please raise your right hand.

Vincent Anzalone. Ron Barone. John Beard. Norman Blake.

Yes, ma'am. Would you please stand and tell me your number?

A. **[JUROR 219]** 219, Number 219.

Q. Okay. Well, let us give you the microphone.

A. Did you just say Ron Barone?

Q. Yes.

A. And he's a financial analyst at PCS?

Q. **[MR. BERKOWITZ]** No, Your Honor.

A. **[THE COURT]** No.

Apparently not.

A. **[JUROR 219]** Then I don't know him.

Q. **[THE COURT]** Thank you.

All right. I think I left off with Norman Blake. John Diaz. John Duncan. Stephanie Anderson Forest. Julie Haviland. Ed Kosmicki. Sheila McNulty.

**[25]**

Peter Melley. Eric Mullins. John Nelson. Glenn Ray. John Schreiber. Mark Shapiro. Peter Shonerd. Rebecca Smith. Willie Alexander. Michael Anderson. Mercedes Arango. William Bauch. Carol Baxter. Kenny Bickett. Jack Bowen. Charles Bowsher. Roger Boyce. Philip Carroll. Mary Cilia.

A. **[CASE MANAGER]** There was one.

A. **[MR. PETROCELLI]** We have one here, Your Honor.

Q. **[THE COURT]** Okay.

A. **[JUROR 48]** Philip Carroll.

Q. Okay. Juror Number 48, how do you know Philip Carroll?

A. His wife used to work for me.

Q. All right. Do you have any social or relationship with Mr. Carroll himself?

A. Not for a long time.

Q. When did you last talk to him?

A. Fifteen, 20 years.

Q. All right. Is there anything about that relationship that would prevent you from being a fair and impartial juror?

A. No, sir.

Q. Thank you. All right. Carol Coale. Denton Cooley.

You have a distinguished group of friends,

**[26]**

Juror Number 48. How do you know Dr. Cooley?

A. Dr. Cooley operated on my mom and my dad and my uncle.

Q. All right. Did you personally visit with him?

A. Yes, I did.

Q. Strictly on a professional level?

A. Strictly on a professional level.

Q. Is there anything about that experience that would prevent you from being fair and impartial?

A. He's a nice man. That's all I can tell you.

Q. Could you listen to his testimony and evaluate it just like you would the testimony of anyone else?

A. I could.

Q. Thank you.

James Crownover. Paul Debbas. William Dodson. Rob Doty. David Draper.

Yes, ma'am. Juror Number 4, did you know Mr. Doty?

A. **[JUROR 4]** I think I know who Mr. Doty is. He's an attorney. If he's an attorney who works for a large firm in Washington.

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A. **[MR. STRICKLIN]** No, Your Honor.

Q. **[THE COURT]** It's a different Rob Doty. Some of these names are similar that's why -- we want to be sure we have the right person.

All right. Yes, Juror Number 17?

A. **[JUROR 17]** David Draper.

Q. You know --

A. David Draper.

Q. How do you know Mr. Draper?

A. He's my brother.

Q. Okay. Is this the same David Draper? Is this the same?

A. He owns S & M Pump Company.

Q. Pardon me?

A. He owns a pump company.

Q. Is that the David Draper that's on the list? It's a different David Draper. Thank you.

I think I left off with Archie Dunham. Donato Eassey. Stacy Eastland. Rocky Emery. Anatole Feygin.

Yes. Juror number?

A. **[JUROR 219]** 219. I used to work for Rocky Emery at UBS PaineWebber.

Q. **[THE COURT]** All right. How long has it been

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since you worked for him?

A. 2001, before he left.

Q. Did you have a -- did you socialize with him outside of the office, or was this strictly a professional relationship?

A. Strictly professional. I don't talk to him.

Q. Is there anything about that relationship that would prevent you from judging his credibility just like you would judge the credibility of anyone else?

A. No, sir.

Q. Thank you. David Flasher. Scott Fordham. William Fox.

Yes, Number 4?

A. **[JUROR 4]** I may know Scott Fordham.

Q. **[THE COURT]** All right. Tell us a little bit about the Scott Fordham you know, and we'll see if he's the same person.

A. He's a member of the church where I serve.

Q. Do you know what he does for a living?

A. I think he's an attorney, but I'm not positive.

**[29]**

Q. How well do you know him?

A. Not well.

Q. Could you judge his credibility just like you would anyone else?

A. Absolutely.

Q. If you didn't think he was credible, would you have any trouble visiting with him at church the following week?

A. No, sir.

Q. Thank you.

All right. William Fox.

A. **[MR. PETROCELLI]** For the record, Your Honor, our Scott Fordham is not an attorney.

Q. **[THE COURT]** Okay. So you can sit by him in the pew next week without any concern.

Gibson Gayle, Jr. Sherri Gibson. Yes, ma'am. Number 53.

Tell us about the Sherri Gibson you know.

A. **[JUROR 53]** Sherri Gibson is the personal accountant of Mr. Ken Lay, and she is my neighbor and friend.

Q. All right. I think we'll talk to you privately at the bench about that.

A. Okay.

Q. Thank you.

**[30]**

Scott Gieselman. Malcolm Gillis. Gordon Hargraves. Steven Hartt. Robert Ray Herrold. Keith Huber. Arild Holm. Robert Jeffe. Howard Jefferson. Leo Kelser. George Kinnear. Yolanda Knull. William Kriegel. Curt Launer. Bev Laws. William Lawson. James Lee. Bruce Lundstrom. Robert Mace. Jacquie Manning. William Maze. Drayton McLane, Jr. William Monteleone. Robert S. Mosbacher, Sr. Raymond Niles. John Olson. Kalli O'Malley. Michael Patrick. Jeff Poche. Jack Rains. William Revko (phonetic). Joseph Romano. James Reilly. Ian Schottlaender.

Kevin Scott. Todd Shipman. Mark Skilling. Hugh Stephenson, Jr. Beth Stier. David Sullivan. Sharon Sullo. Schuyler Tilney. Jack Trotter. Charles -- yes, sir. Juror 249.

A. **[JUROR 249]** Mr. Trotter was a director and committee chairman of the company I was chief financial officer for.

Q. **[THE COURT]** All right. How well do you know him?

A. I knew him pretty well. I was -- I dealt a lot with him.

Q. When did you last deal with him?

A. Probably in -- I'm trying to remember when I was on the board. I think it was '96.

Q. All right. Thank you, sir.

**[31]**

Richard Walker. Richard Wallace. Perry Waughtal. Stephen Wende.

Yes, ma'am?

A. **[JUROR]** I know Steve Wende, a pastor of First United Methodist church.

Q. **[THE COURT]** Are you a member of that church?

A. No.

Q. Okay. How do you know him?

A. Through the Methodist connection.

Q. All right. Have you socialized with him?

A. No.

Q. If he were to testify in this case, could you evaluate his credibility like you would anyone else?

A. Yes.

Q. Thank you.

I think we had another hand.

A. **[JUROR 193]** He's the pastor of the church, and I know him. I'm a member.

Q. **[THE COURT]** You're Number 193?

A. Yes, sir.
Q. Are you a member of his church?
A. Yes, sir.
Q. How long have you been a member?
**[32]**
A. Since I was born.
Q. Without -- I don't mean to pry, but do you attend regularly?
A. Yes, sir. Every Sunday.
Q. If he were to testify in this case, could you evaluate his testimony just like you would anybody else?
A. Yes, sir.
Q. All right. Thank you.
David Williams. Keith Williams. Kelly Williams. Edwin Young yes, sir?
A. **[JUROR]** Is Kelly Williams a pastor?
Q. **[THE COURT]** I don't know. I'll ask whoever put him on the list.
A. **[MR. RAMSEY]** He is, Your Honor, retired minister.
Q. He's a retired minister?
A. **[JUROR]** Yes, sir, I know him.
Q. **[THE COURT]** How do you know him?
A. He married me.
Q. Okay. I'm not going to ask anything about that.
A. Okay. Turned out okay.
Q. Okay. Let the record reflect that was a voluntary statement. The Court did not ask any
**[33]**
questions.
Edwin H. Young. We have a lot of hands. All right.
On the first row, Juror 17?
A. **[JUROR 17]** The pastor of Second Baptist Church.

Q. **[THE COURT]** Do you attend Second Baptist?
A. Yes, I do.
Q. It's not a small church. How often do you come into contact with Reverend Young?
A. You mean personal contact?
Q. Yes.
A. Not very often.
Q. You hear his sermons, I assume?
A. That's correct.
Q. Is that the primary way you have of knowing him?
A. Yes, sir.
Q. All right. If he were to testify in this case, could you evaluate what he had to say just like you would anyone else?
A. Yes, sir.
Q. Thank you.
I believe 175 also knows Reverend Young.
A. **[JUROR 175]** I attend his church, Second Baptist.
Q. **[THE COURT]** And how long have you attended?
**[34]**
A. About 13 years.
Q. Do you know him socially outside of church?
A. Not socially, but I do know him and his wife.
Q. Through church activities?
A. Through church activities.
Q. If you were selected as a juror, could you listen to his testimony and evaluate it just like you would anyone else?
A. Yes, I could.
Q. Thank you.
Yes, ma'am. We have another hand?
A. **[JUROR 63]** I have.
Q. **[THE COURT]** Number 63?
A. Yes, sir.
Q. And are you a parishioner of Second Baptist?

A. I attend Second Baptist School as well.

Q. All right. Do you know Reverend Young through the school and the church?

A. Yes, sir.

Q. How long have you attended the church?

A. Twenty-four years.

**[35]**

Q. Most of your life?

A. Yes.

Q. If he testified as a witness, could you evaluate his testimony just like you would anyone else?

A. Yes, sir.

Q. Thank you.

Moving beyond Reverend Young, the next one is Samuel Zell. And last, Steve Zimmerman.

All right. Let me get my notes organized here.

Now I'm going to ask you some general questions, and we'll follow the same format we've had with respect to these potential witnesses. I'm going to ask you some questions and then ask you to raise your hand if you need to in response to the question.

Have any of you ladies or gentlemen ever been the subject of an investigation by the Securities Exchange Commission or the National Association of Securities Dealers? If so would you please raise your right hand.

A. **[THE COURT]** I don't see any hands.

Q. You will hear testimony in this case from witnesses who have pleaded guilty to crimes and who have entered cooperation agreements with the government. You may also hear testimony from witnesses who have entered

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into agreements with the government that provide that these witnesses will not be criminally prosecuted or who have been granted immunity from prosecution.

As I will instruct you at the end of the case, these agreements are lawful and are provided for in the rules of this Court. I will also instruct you, however, that you must carefully examine and weigh such testimony with greater care and caution than the testimony of an ordinarily witness. I will instruct you that you will have to decide whether these witnesses' testimony has been affected by their agreements with the government or by promises made by the government or by these witnesses' interest in the outcome of the case or by any prejudice that these witnesses may have against the defendants.

I will instruct you that you should never convict any defendant upon the unsupported testimony of such a witness unless you believe the testimony of that witness beyond a reasonable doubt.

I will also instruct you that the fact that an alleged conspirator who may be testifying as a witness may have entered a plea of guilty to an offense is not evidence of the guilt of any other person.

What I want to know now is, notwithstanding my instructions to you about how to weigh the testimony of cooperating witnesses, do any of you have any preconceived

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ideas about this type of evidence that would prevent you from listening to it and giving it the weight that you think it deserves under the Court's instructions? What I'm basically asking you is: Although you should view this testimony with caution, you should nevertheless consider it and evaluate it like you would other witnesses' subject to the Court's cautionary instructions.

Do any of you feel that you could not follow those instructions and you could not listen to these types of witnesses and evaluate their testimony? If any of you feel that way, would you please raise your right hand.

A. I do not see any hands.

Q. I noted on your questionnaires that some of you have served on juries in state court. In state court, the jury sometimes decides what the punishment will be. In federal court, the Judge decides what the sentence will be if a defendant is found guilty.

You will not be asked any questions about punishment if a defendant is found guilty, and I will instruct you that you should not let punishment enter your deliberations at all while you're talking about the case.

Would any of you be unable to follow that instruction, that is, not to allow punishment to enter your deliberations or affect your considerations? If any of you would have trouble following that instruction, would you

**[38]**

please raise your right hand?

A. I see no hands.

Q. Some people may have religious or philosophical beliefs that make it difficult for them to pass judgment on others. What I want to know is whether any of you have such strong religious or philosophical beliefs that you could not render a verdict in this case based on the evidence admitted during the trial and my instructions to you concerning the law? Do any of you feel that because of religious or philosophical beliefs you could not basically sit in judgment on others based on the legal instructions that I will give you? If any of you feel that way --

Yes, on the first row, please stand and tell me your number.

A. **[JUROR 45]** 45.

Q. **[THE COURT]** And would you tell me what your view is, sir?

A. I'm only 20 years old. And basically since I've grown up, I've basically lived around my grandmother. And she's always told me never judge anybody, and that's one thing that strongly goes around in my church is "Judge not lest ye be judged." And that's just something I don't believe in.

Q. All right. And that's certainly a

**[39]**

good maxim to follow in church because many religions teach that only the ultimate Deity can pass judgment on any human being.

But that's not what we're about here. We're about deciding whether the government can prove beyond a reasonable doubt that either of these gentlemen did anything that they're accused of. It's not a moral judgment. It's a legal judgment basically asking you to look at the evidence, listen to the witnesses, and then be guided by my instructions on the law.

Now, do you feel that you could conscientiously perform that civic service notwithstanding your religious views?

A. I can't necessarily say that, sir.

Q. Well, tell me what you feel. I don't mean to lead you. Tell me what you honestly feel.

A. What I honestly feel? Everybody in here at least one point in their time has been falsely accused of something, and whether it was with their parents, whether it was with a coworker, whatnot, there's always that one time where you knew you were right and yet you took the punishment for that.

Now, I know you're saying it's the legal and I'm speaking of moral; but at the same time, that sort of crosses into the barrier of the same situation to me.

**[40]**

And that's just one thing that I believe that I just couldn't do.

Q. You couldn't sit in judgment on others?

A. Correct sir.

Q. All right. Why don't you have a seat. Thank you.

All right. I believe there was another hand up in response to that question, I thought. Apparently not.

All right. Thank you very much for your candor. That's what the purpose of this whole exercise is.

The next question is, do any of you believe that this trial is an opportunity to right some wrong for the victims of the collapse of Enron or to see that justice is done? In other words, do you view this as your opportunity to strike a blow for justice?

Now, I'm not criticizing that view, but it's important that we know your true feelings about this case before we allow you to be selected as jurors. So I'm relying upon your integrity and your candor to answer these questions.

Do any of you feel that way?

A. **[THE COURT]** I see no hands.

Q. Do any of you believe that your sympathy

**[41]**

for those who have lost jobs or savings because of the collapse of Enron would prevent you from following any instructions that I give you regarding your obligations to base this case solely on the evidence at trial and my instructions on the law? That was kind of a rambling sentence, but let me try to streamline it.

Do any of you feel that because of your sympathy towards the victims of Enron you couldn't base your decision solely on the evidence?

Anybody feel that way in your heart of hearts?

A. I see no hands.

Thank you. Now, in just a moment, I am going to ask you each some individual questions based on the questionnaires that you submitted. As you-all know, the process of jury selection in this case actually began several months ago when each of you were mailed a lengthy 14-page questionnaire to complete, 14 pages, 77 questions with multiple subparts. And I know it took you some time, and the lawyers and I appreciate the effort that you put in to answering those questionnaires.

This is an important case. In a normal case, jury selection begins and ends in one day or less. The jury comes in, fills out a questionnaire, may fill out an additional questionnaire as in the Nigerian barge case.

**[42]**

The lawyers are given a chance to read the questionnaire that day and then the jury is subject to the voir dire like you are and the jury is selected. All that takes place in one day.

In this case, this whole process began months ago. You completed your questionnaires and mailed them in November. And the lawyers have had those questionnaires for over a month, and they have had a chance to read them. And by agreement, the lawyers have excused a significant number of potential jurors.

So today's questions to you are the culmination of a lengthy process that began several months ago in which we have endeavored to select 16 fair and impartial people. We appreciate very much the time and effort each of you took to fill out the questionnaires, and it will greatly expedite the process of selecting a jury.

Some of those questions asked about what you have read about the case or heard about it on radio or television. In your answers to some of the questionnaires, you stated that you had read about the case or heard reports of it on radio or television.

Now, all of us have been exposed to substantial media attention about this case. No one expects you to be able to blot out everything that you may have read or heard about the case. That would be humanly

**[43]**

impossible. But we do expect that you will base your decisions in this case, if you are selected as a juror, solely on the evidence that you hear in this courtroom.

Some of you indicated in your answers to the questionnaire that you had opinions about this case. Some of those opinions were based on what you had read or heard about the case through media accounts.

No matter how conscientious a reporter may be there is no way that a particular newspaper article or television program or even a book or movie can approach the amount of information that you will hear during this trial. For one thing, no reporter will have had access to all the information that you will hear and see during this trial.

But at the same time, if you have already formed opinions about the case that would destroy your impartiality, then it would not be fair to the parties to allow you to serve as a juror. That's why I am going to ask you questions about what you have heard or read about the case.

Some of you have indicated in the questionnaires that there were matters that you believed to be private, and I will respect that request. And in order to ask you about those private matters, I will ask that you come forward to the bench. And I will talk to you about any matters that you indicated you wish to be kept private,

**[44]**

and I will follow up on your responses about exposure to publicity in the case.

So what we're going to do now is bring you up in groups. I have divided the 96 seats into basically eight groups of 12. And I am going to ask each group of 12, in an appropriate order, to line up over here in front of the jury box. And then I am going to ask each of you individually to come forward, and I will ask you some individual questions.

Now, those of you who are seated in the audience, who are not up here, if you need a glass of water or if you need to use the restroom, if you will raise your hand, one of the Court security officers will escort you next door where we have another courtroom available. So I don't expect you to sit here while I'm questioning other people without an opportunity to take a break if you need a break.

If you go next door under the watchful eye of a Court security officer, do not talk to anyone about the case or allow anyone to talk to you. The only person you will be exposed to during this process is another potential juror, but don't talk to that person either. So if that's -- that's the process we are going to follow.

Now, will Jurors 4 through 29 please line up over here. As soon as I'm ready, I'll call counsel

**[45]**

forward. All right. Will one lawyer per side come forward.

A. **[MR. PETROCELLI]** We don't have 11.

Q. **[COURT]** Juror Number 4.

(The following was had at the bench)

A. Be sure and tell the jurors there's no right or wrong answers

Q. I've tried and been doing it. Will you stand between these two handsome men here. This is Mr. Petrocelli and Mr. Stricklin.

How do you do?

A. **[JUROR 4]** Fine.

Q. **[COURT]** I have a couple of questions to you. And there's no right and wrong answers to these questions. You've heard what I've said. We're just trying to pick some impartial people. We've all looked at your questionnaires, and I have just a few questions about it.

You indicated in response to a question about people who lost jobs or money in an investment that you think your financial was invested in Enron but you don't recall what happened. Did you lose any money because of the collapse of Enron?

A. I honestly don't know. I just don't know the answer to that.

Q. All right. Then I gather if you

**[46]**

did lose some it wasn't that much, if you don't remember?

A. That's right. I was not one of the major stock owners.

Q. Okay. Well, I know that ministers are paid large sums, so you probably would have recognized if this was a large sum of money? Is that a fair statement?

A. That's a fair statement.

Q. All right. Let me see. What else do I have here? You read the "Houston Chronicle," "Time Magazine," "Newsweek." You probably watch television shows. Do you recall any particular articles dealing with Enron?

A. No. There's nothing that stands out to me.

Q. So the last few days the "Chronicle" has had a media blitz. You just can't avoid reading about Enron no matter what section you turn to.

A. Right.

Q. Have you read those articles?

A. Yes.

Q. Do you recall anything in particular about those articles?

A. I think very little. I think, frankly, I've been the most interested in the jury selection

**[47]**

articles, just to learn more about what the process is going to be.

Q. Not as bad as the media made it out to be?

A. No.

Q. Okay. Do you recall any particular article, either in a magazine or newspaper, that you read and that really got your attention?

A. No.

Q. Do you recall any television or radio articles that's been on 88.7 at various times and the national news has had articles? Do you recall any of those?

A. May I -- I certainly haven't determined my opinion, no.

Q. Is there anything about those articles that stand out in your mind?

A. I don't. I really couldn't say that it did.

Q. All right. If you were selected in this case, could you base your decisions on the evidence you hear in this courtroom?

A. I believe so.

Q. All right. Is there anything about -- we could spend all day asking you questions about

**[48]**

your background. We might not isolate the one aspect of your life that would make you perhaps not as fair as other people. Is there anything about your previous experience that, in all candor, we should all know about because it might affect your impartiality?

A. I don't think so.

Q. All right. Thank you very much.

A. Thank you.

Q. **[MR. RAMSEY]** Your Honor, may we suggest a follow-up question on that questionnaire?

A. **[THE COURT]** What's the question?

Q. She admitted looking at The Smartest Guys in the Room, and she --

A. Juror Number 4, would you come back.

Q. The other point?

Q. You said that you watched the movie The Smartest Guy in the Room?

A. **[JUROR 4]** Yes, I did.

Q. **[THE COURT]** Okay. What did you think about it?

A. I thought it was fairly chilling. Particularly with regard, I guess, perhaps to the California thing. But I also don't know how accurate that is.

Q. Well, that's what we're trying to

**[49]**

find out. You heard what I said about it, and I am not being critical. They have a job to do. This case will be decided on what you hear in this courtroom. Can you do that?

A. Yes, I believe that I can.

Q. Was there some other question?

A. **[MR. PETROCELLI]** Your Honor, the juror indicated that she thought that there was widespread greed and there seems to be widespread media. And that's something that is just based on something that was read.

Q. **[COURT]** All right. What's your view?

A. **[JUROR 4]** Yeah. I don't think that it would -- and my sense, really, is that the government would have to prove its case.

Q. You said that you have been to functions with Mr. Lay and that your daughter, whose children went to school with Mr. Skilling's children -- is there anything about those social relationships that would --

A. No. I mean, it's -- you know, a large function. Mr. Lay -- I mean, I certainly don't know him personally. He doesn't know me. Mr. Skilling, I didn't know his children. I just know that they're....

Q. Mr. Stricklin, do you have anything?

**[50]**

A. **[MR. STRICKLIN]** No, Your Honor.

Q. **[THE COURT]** Thank you.

Juror Number 8. How do you do? We just have a few questions to you, and there's no right and wrong answer to these questions. And we're not going to cover the matter that you've already answered in your questionnaires.

One of the questions asked to you was do you know anyone who applied for work with -- we asked if you had read or heard anything about the Enron case, and you said you watch Channel 13 news, Channel 11 news and Channel 2 news.

Do you remember anything in particular about those newscasts that you saw?

A. **[JUROR 8]** There was one in particular that I remembered. Someone had committed suicide.

Q. You remembered what?

A. Someone had committed suicide that worked for Enron. That was the only thing that really stuck in my head about the case.

Q. Do you remember anything dealing with whether the defendants were guilty or not of any crime?

A. I know they're being charged with a crime. I don't know if they're guilty or not.

**[51]**

Q. That's right. That's the whole purpose of the trial. But what I'm trying to find out, some person may have read an article or heard a TV show that really makes them think that the defendants are guilty. Have you read such an article or seen such a TV show?

A. No.

Q. Do you remember a particular article that you have read about the case?

A. I just remember what I saw in the news last night.

Q. What did you see last night?

A. I just -- you know, it was on Channel 13 and just how many -- you know, different -- like fraud and conspiracy charges. I was just basically paying attention to how long the trial would last and stuff like that.

Q. Do you understand what I've told you earlier about the jury will decide whether the charges are accurate or not?

A. Yes.

Q. Do you think that you've already made up your mind about the defendant's guilt because of what you read or heard?

A. No, I haven't.

**[52]**

Q. Do you recall any particular magazine or newspaper article that you read carefully and that stood out in your mind?

A. The only thing that, you know, just stands out in my mind is what I've seen on the television. I haven't read anything in the magazines or the newspaper.

Q. And which newspaper do you normally read?

A. The one that I probably read most often would be the "Albuquerque Journal" because that's what I read when I go visit my dad. And I don't really read the paper, you know, every morning like some people do. So I don't really read it. I basically watch the news.

Q. Has there been much mention of the case in the Albuquerque paper?

A. No, not that I know of.

Q. Is there anything about your background that you think we ought to know with respect to your ability to be fair and impartial?

A. I can't think of anything.

Q. Mr. Stricklin, do you have any questions?

A. **[MR. STRICKLIN]** I do not, Your Honor.

A. **[MR. RAMSEY]** No, Your Honor.

Q. **[THE COURT]** Thank you, ma'am.

**[53]**

Juror Number 10. How do you do, sir?

A. **[JUROR 10]** Fine. How are you this morning?

Q. Good. I have a few follow-up questions based upon your questionnaire.

A. Okay.

Q. Again, it's not our purpose in prying, and there are no right or wrong answers on this. You indicated in response to one of the questions that you knew casually some co-workers who owned Enron stock and you know two former Enron employees that worked for Shell, your current employer?

A. Uh-huh.

Q. Did you ever talk to these people about the reasons for the collapse of Enron?

A. No, sir.

Q. The people who lost their money, are they close friends or just acquaintances?

A. Just acquaintances. One is our HR director for our group. I invest maybe an hour a week, but no long personal conversations. Really, I just happen to know she worked for Enron when we hired her.

Q. Okay. You indicated in response to one question that the collapse of Enron you thought was due to greed and mismanagement. Now, this trial is really not about mismanagement. It may be about greed, but it's

**[54]**

really about criminal liability, as I tried to explain.

Do you think that because of what you may have already learned in watching TV or listening to the news, that because Enron fell, there must have been some criminal liability on the part of these defendants?

A. No, sir.

Q. What -- which newspaper do you normally watch -- read the most?

A. The only one we get, the "Chronicle."

Q. Well, I think in response to another question you put "Wall Street Journal"?

A. I read "Wall Street Journal" at work, and I read "Texas Lawyer" and sometimes the "Houston Business Journal."

Q. Okay. Do you recall any particular articles that stand out that you've read about the case?

A. No, sir. I haven't followed it in detail or to any extreme at all.

Q. Do you recall any particular television shows that you've watched or radio programs that you've heard about the case?

A. Not other than just the nightly news. That's all. No more than probably anybody else.

Q. All right. This is what we're trying to find out. Is there something you've heard or

**[55]**

listened to that just makes such an indelible impression in your mind, that regardless of what the evidence may be, you're going to stick with that view?

A. No, sir. I wouldn't do that.

Q. You indicated in response to one question, which was, "Do you have an opinion about the following people," with respect to Mr. Lay. And you said, "If he did not know what was going on in his company, he was really a poor manager or a leader."

Now, this really is not an -- not dealing with putting him in a business round table. We're dealing with a criminal charge of wrongdoing. Are you going to assess him on his management skills or asses him on the instructions that I give you on the law?

A. The instructions you give me. Being a manager is not a crime or not a crime -- I mean a crime or not a crime, either way.

Q. In response to another question where I said, "Based upon anything you have heard or read or been told, do you have any opinion about the guilt or innocence of these people," you said, "I cannot say if they are guilty or innocent. I would say they are suspect."

Can you tell us what you mean by that?

A. I think that's why we're here. Someone apparently thought they were suspect enough to file

**[56]**

charges. And what I see on television and everything and -- not to any great detail, but watching Enron from the start to finish, somebody wasn't running the ship, I guess, is kind of my --

Q. Can you conscientiously follow my instruction that they're presumed to be innocent?

A. I think so.

Q. If the government doesn't prove guilt beyond a reasonable doubt -- and that's a heavy burden.

A. Right.

Q. If the government fails to prove that burden, are you going to have any reluctance about going home and telling your co-workers at Shell that you voted to acquit the defendants?

A. I don't think I would tell anyone what the vote was.

Q. Well, if they're acquitted -- if they're acquitted, it's going to be obvious. Seriously. You're in the business community, and many people look for the business community to sort of police its own. If you -- if the defendants were acquitted, would you have any reluctance in telling people the government didn't prove its case?

A. Maybe some hesitancy, but not anything

**[57]**

I could feel guilty about myself having done or not done a good job.

Q. Would you put the government to its proof? Can you assure me that you can do that?

A. Yes, sir, I believe so.

Q. **[MR. PETROCELLI]** Yes, real quickly, sir. When you talked about greed, what did you have in mind? Greed by whom?

**A. [JUROR 10]** The head people with Enron. I mean, I've seen a law firm that I worked for close up because of greed, and I just kind of -- I think that was one of the result causes. I think it's probably a root cause for a lot of things, but --

Q. Do you think you could be fair to Mr. Skilling and not presume that he did anything wrong on account of greed or anything else, sir?

A. I think I could do that. Like I said, I know greed is not a crime. Other people may use a different word. I may have been a little strong on the word, but it's not a crime. Some people call it ambition, but I think I could judge on the facts.

Q. **[THE COURT]** Mr. Ramsey?

A. **[MR. RAMSEY]** Nothing.

Q. Mr. Stricklin?

A. **[MR. HOUESTON]** Nothing from me, Your Honor.

**[58]**

Q. **[THE COURT]** Okay. Thank you. Juror Number 11. How do you do, sir?

A. **[JUROR 11]** Very good. Yourself?

Q. Thank you for coming down and going through all this. We have a few more questions, and there are no right or wrong answers. And we're just trying to follow up based on some of the information you gave us in the questionnaires. In response to one question, you said you worked with someone who worked at Enron.

A. Yes, sir.

Q. Can you tell us a little bit about that?

A. Yes. His name is Harry Yokabulasha (phonetic). And he worked with them for several years. And I work with him now. He's a project manager in the company I work for, Jacobs Engineering.

Q. What was his job at Enron?

A. He was in an engineering group over there. I'm not real sure. I didn't -- I try not to talk to him too much about --

Q. Did you -- did you come into contact with him? Has he ever talked to you about any of the executives?

A. No.

**[59]**

Q. Do you know if he lost any money in his 401(k) or retirement plan or anything?

A. Absolutely.

Q. He did?

A. Yes.

Q. Do you know how much he lost?

A. No. We never got into specific amounts, but --

Q. How close are you to him?

A. I work with him every day.

Q. Do you socialize with him outside of work?

A. On occasion, if we're on an out-of-town trip, yeah.

Q. If the federal government failed to prove the defendants' guilt, would you have any reluctance in acquitting the defendants because your friend lost money?

A. No. He had nothing to do with it.

Q. Let's say the government failed to prove guilt beyond a reasonable doubt and you and the other jurors found the defendants not guilty -- which will be your obligation -- and you show up at work and he has read in the paper he was acquitted, do you have any reluctance to look him in the eye and say the government didn't prove

**[60]**

its case?

A. I would have no problem saying that.

Q. You indicated that greed on Enron's part is an opinion you have. Can you tell us a little bit what you mean by that?

A. Well, sure. I think anyone from Billy Sol Estes to T. Boone Pickens, it's all greed. All the way up. That's pure greed. They're trying to meet the bottom line, trying to meet their shareholders.

Q. Do you mean by greed that they're committing some crime?

A. I think they're stretching the legal limits on it. I'm not sure -- I'm not going to say that they're all crooks, but, you know --

Q. Do you think anybody who is a CEO of a big company is probably a crook?

A. No, I didn't say that.

Q. Okay.

A. I didn't say that. I just said they walk a line that stretches sometimes the legality of something. They stretch points.

Q. Do you think because Enron has collapsed that probably Mr. Lay or Skilling crossed that line?

A. I have no idea at this point.

**[61]**

Q. Well, that's what we're trying to find out.

A. I'm just saying historically, if you go through Billy Sol Estes all the way up, you have the high-risers in there. And then most of them -- you know, some get caught and some don't.

Q. If you are selected, can you start this case with a clean slate that would require the government to prove its case?

A. Sure.

Q. You said that you watch Channel 2, Channel 13, The O'Reilly Factor and the "Houston Chronicle." How often do you read the "Chronicle"?

A. Every day.

Q. You read it cover to cover like I do, or you just pick up the sports section and -- got it with you?

A. Got it with me.

Q. Do you read the whole paper?

A. Sure.

Q. Do you believe everything you read in it?

A. No, I do not.

Q. Is there any particular article that you recall reading that stands out in your mind?

**[62]**

A. No, just in general. I mostly scan -- scan those. I'm not -- the Enron case -- I worked at KBR right across the street when all of this was going on. And, you know, it was of interest because I was close by. But did I get into details of it. No, I did not.

Q. All right. Do you recall any particular television program that stands out in your mind?

A. No. I haven't watched in several years. I just kind of tune this out. It's kind of old news.

Q. Is there anything about your background that you think we should know in going through this process? I mean, we could ask you questions all day and find out there's something in your background that the lawyers and I probably would find significant if we knew that.

A. No. Business-wise or personal-wise, anything, no, I don't think so. I think one thing you should know is that I'm hearing impaired and I have a hearing aid. And my wife says I don't hear everything she says.

Q. Mr. Ramsey and I can form a club. You'll hear "Speak up." And he'll say, "Judge, I can't hear you." So you'll fit right in.

A. Sometimes she says I don't hear what

**[63]**

she says. What I hear is not what she says and what she tells me.

Q. That happens to me. It generally involves some household chore.

A. Yeah.

Q. **[MR. PETROCELLI]** One of your questions -- because Enron collapsed, do you have already in your mind that Mr. Skilling or Mr. Lay broke some laws there?

A. **[JUROR 11]** I have no idea if they have or not. Just from their -- where they're at in the company, I just say that they normally stretch -- I mean, it's all a new frontier. And a lot of this is untested, and I think they test it. They're trying to satisfy their shareholders, so --

Q. **[MR. RAMSEY]** Based on what you know about the case, do you think Mr. Lay is greedy?

A. **[JUROR 11]** Yeah, I think so.

Q. We have to bring forward some kind of proof to remove that from your mind?

A. I don't hardly know how you could do that. I mean, anybody that takes home the salaries and the bonuses and stuff that they have, they got to be greedy or they wouldn't do that.

Q. **[THE COURT]** Well, do you think anybody who makes $10 million or whatever he makes is probably greedy?

**[64]**

A. **[JUROR 11]** No. No, I can't really answer that. I don't know.

Q. Well, I guess what we're trying to find out is do you think Mr. Lay may be greedy? Are you starting the case with sort of an inkling that because he's greedy he must have done something illegal?

A. No, not necessarily. And I'm not sure -- you know, they -- they earned their salaries. I'm just -- there's a lot of stuff that goes on that we don't know about that -- but, you know, that's kind of an obscene thing, some of these bonuses and stuff that they get. So that's just my opinion.

Q. Mr. Stricklin?

Q. **[MR. STRICKLIN]** One, yes. I believe you said greed and ambition in your mind are the same thing?

A. **[JUROR 11]** Yeah.

A. Thank you.

Q. **[THE COURT]** Have a seat. I don't remember the first four people. Are there any challenges for cause on the first four people we talked about, 4, 8, 10 and 11?

A. **[MR. STRICKLIN]** None from the United States.

Q. **[MR. PETROCELLI]** Yes. On behalf of the defense for Mr. Skilling, we would challenge Number 11.

A. **[MR. RAMSEY]** I join in that, Your Honor. I think the government would clearly rely on greed as the

**[65]**

indictment. It's not in the indictment.

Q. **[THE COURT]** No. I looked at him in the eye and I've heard all his questions and the motion is denied.

A. **[MR. PETROCELLI]** I think it would make a difference. I'm not quarreling with the ruling. I'm just asking because the motion was overruled. We asked for an additional peremptory.

A. **[MR. PETROCELLI]** We joined.

A. **[THE COURT]** That's denied.

Q. **[THE COURT]** Juror Number 13. Would you please come up.

If you'll come around here. It's kind of tight, but we'll try to use your time efficiently. We just have a few follow-ups based on your questionnaire. You indicated in response to one question, have you heard or read anything about Enron cases, and you listed news. And then over here, later, what magazines or newspapers or trade publications you read and you list none. Have you read anything about the case?

A. **[JUROR 13]** I've heard what's on the news, basically. I haven't heard -- you know, read a lot of newspapers or anything like that.

Q. Do you subscribe to the "Chronicle"?

A. No, sir, I don't.

**[66]**

Q. Don't tell them out there. They think it's a Houston media source. What television shows do you watch?

A. Just whenever I have time I watch -- I don't know -- reruns and things about -- you know, movies or something like that. So I really don't watch a lot of TV. My work -- I get home late, so I usually just go home.

Q. You're not one of these people who watches CNN or Fox news every night?

A. Sometimes I catch the news. But for the most part, I'm finding a better way to get my kid to pass the tax test.

Q. There's been a lot of publicity in the last week or so. Have you read anything in particular in the last week about the case?

A. No, sir, I have not.

Q. And do you remember anything that you may have heard on television or radio in the last week or so?

A. No. Just that the trial had moved from the 17th to the 31st, and I figured out that's where I was going to be.

Q. And we appreciate your waiting.

In response to one question, which said would you like to serve on the jury, you said no. And then

**[67]**

you said, "I do not feel qualified to be a juror on a company I know little about." Would you tell us what you mean by that?

A. Well, I didn't know all the political -- whatever was going on. I just never -- you know, didn't follow the case a whole lot. It was all over the news on every detail of Enron.

Q. So you'll start out not knowing anything about the case?

A. Basically. Now I know a little bit more.

Q. Any questions of this gentleman?

A. **[MR. PETROCELLI]** No, Judge.

Q. **[THE COURT]** Mr. Stricklin?

A. **[MR. STRICKLIN]** None from me, Your Honor.

Q. **[THE COURT]** Thank you. Have a seat.

Juror Number 16. How do you do, sir?

A. **[JUROR 16]** Fine. How are you, Your Honor?

Q. Thank you for waiting. We'll try to move along as quickly as we can.

You said in the questionnaire that you haven't read or heard anything about the Enron case?

A. Well, just I didn't really have no thoughts about it, you know. I mean, I saw what was in the paper and what was on TV, but I ain't really paid

**[68]**

attention.

Q. Do you subscribe to the "Chronicle"?

A. I used to, but I don't have the subscription anymore.

Q. What -- where do you come across newspapers in your daily activities now?

A. At work.

Q. And you read the whole paper?

A. No.

Q. What do you read?

A. Mostly the sports.

Q. Okay.

A. That's about it. And then the "Chronicle" don't come through the mail. USA Today. And I just glance at the sports page, and then I'm gone.

Q. Do you recall hearing anything about the case on television?

A. Just what I saw on 13 news because that's the news I watch. Like I say, I'm not in debt with that because I'm a sports fan. And news I don't believe because everything changes from day to day in the city. And I don't really watch the news because it's mostly bad news anyway. So....

Q. Any questions?

**[69]**

A. **[MR. RAMSEY]** No.

Q. **[THE COURT]** Mr. Stricklin?

A. **[MR. STRICKLIN]** Nothing from me, Your Honor.

Q. **[THE COURT]** Thank you.

Juror Number 17. How do you do, sir? If you'll come around here.

We have a few questions. And again, we're not going to repeat the questions that are already in the questionnaires, but we just have a few follow-up. In response to the question, "Do you have an opinion about the cause of the collapse of Enron," you said, illegally -- "Illegal activities of some employees and some prosecutors determined to prove that all people working at Enron were guilty, as well as Arthur Andersen."

And I ask what did you base that on, and you said, "Listening to TV, reading articles and my experience working for corporations." Could you kind of expand what you mean by that?

A. **[JUROR 17]** Well, I think what I meant was I felt like -- I guess maybe I had an opinion, especially on Arthur Andersen, that they were pretty well innocent from things that I heard. Like whenever everyone was getting after them for destroying the paperwork and things like that,

that I know that most companies that I've worked for always have a retention log and you -- and they destroy

**[70]**

paperwork. And it's legal to destroy paperwork as long as you're doing it within that retention policy that you had.

So a lot of people were getting upset that, hey -- they're saying, hey, they're out there crunching up paperwork and they shouldn't be doing that, they're destroying evidence.

And then even later on they came back, here not too long ago, and said Arthur Andersen was fairly well innocent. So to me what happened was that Arthur Andersen went bankrupt because a case was brought against them. And it may not -- it may be the fact that they shouldn't have brought a case and made them bankrupt.

Q. The government in this case may have been the same people who brought the case against Arthur Andersen. Do you feel that you couldn't listen to the government's evidence in this case because the same government lawyers may have prosecuted Arthur Andersen?

A. No, I don't feel that way. I feel like I could be impartial because I think that you don't know -- I mean, you know, from the beginning, I don't know which people are innocent and guilty. And I was basing, I guess, about Arthur Andersen on the -- on their retention policy. I don't know what their retention policy is either.

Q. When you say "illegal activities," I guess our concern is: Do you think there's some illegal

**[71]**

activities by Mr. Skilling or Mr. Lay?

A. I don't know. I mean, I believe that it's quite possible for a chief executive officer of the company and, you know, the top executives not to really know what's going on in accounting. So, I mean, it's -- I would -- you know, I would be fairly impartial that way, I feel like.

Q. What do you -- you read the "Chronicle" and Channel 13 news and radio talk shows. How often do you read the "Chronicle"?

A. I don't read it very often because I don't take it. I just read it. I do listen to the radio and see TV news, but I do not take the "Chronicle" now. I read it every once in awhile. My son, if he's around, I'll go over to his house. Otherwise, I don't.

Q. Which radio program do you listen to?

A. I listen to the 740, which is what, KTRH, I think? And I also listen to 610 for sports, normally.

Q. Do you listen to mostly sports? And, of course, KTRH has news and sports.

A. They have a lot of talk, mostly.

Q. Is there anything that you recall in listening to the radio that stands out in your mind

**[72]**

about this case?

A. The only thing that I recall was this morning on my way in I heard one. They were interviewing some guy who worked with Enron, and he said he thought that he would find them guilty automatically if he was on the jury because he said that it would be worse than a German trying to say that they didn't kill the Jews. But that was this morning.

Q. What do you think about that?

A. Well, I thought the guy was pretty narrow minded. I think -- I believe everyone should be considered innocent totally until they get a chance to come in court.

Q. Any follow-up?

Q. **[MR. PETROCELLI]** Yes. One question. Thank you, sir. Have you formed an opinion already based on what you've read that there has been and was an accounting fraud at Enron?

A. **[JUROR 17]** Well, I don't -- I believe there was probably some accounting fraud, but I don't -- but Arthur Andersen was an auditor. So I felt just because they came in -- someone could cover up as the auditor.

Q. Would you be open to hearing evidence one way or the other about whether or not there was any fraud?

**[73]**

A. Yes, sir, I would be.

A. **[THE COURT]** Okay.

Q. **[MR. STRICKLIN]** I have a few questions, Your Honor.

I represent the government. I promise you it won't take long. You said -- awhile ago you said that you felt that Arthur Andersen's bankruptcy was because of the government's investigation. Is that the way you feel?

A. **[JUROR 17]** Yes, sir.

Q. And you said in your questionnaire that you thought that -- you said some prosecutors are trying to prove everyone who worked at Enron is guilty of a crime, basically. Is that the way you feel?

A. What I felt like was -- I said that everyone that may have -- yes. I do feel that everyone that may have been involved in it, that there's any question about, was grabbed up and said, okay, now, we're going to go ahead and try all of these people.

Now, there may be some innocent and there may be some guilty people, but we're going to make sure that we get all of them. Kind of like that football coach who said, you know, instead of getting to the quarterback, he was going to grab everybody out of the way and then get the quarterback.

**[74]**

Q. Do you think the prosecutors are intentionally trying to prosecute innocent people?

A. Well, not necessarily. What I feel like is anything that there may be -- that may be questionable at all, they're being grabbed up and then letting the jury decide, hey, are they innocent or guilty.

Q. In the end, we have to prove our case beyond a reasonable doubt. And that's the standard. There's no real definition of that. All we know is it's a very high burden. Are you going to hold the government to a higher burden because of your beliefs, that we've already bankrupted Arthur Andersen and are catching everybody up and, you know, throwing them out -- not throwing them out -- catching everybody up to make sure we get everybody? Are you going to hold us to a higher standard than if you didn't feel that way?

A. Well, what I would try to do, I would try -- I think I would try to listen to the Judge and hold them to whatever he says and do -- take his instructions and do whatever he says. Even though I do -- even though I feel like that everyone is being held to a higher -- a high standard, I still think that I could do it impartially.

Q. Thank you.

A. But I do -- I would still like to be dismissed, though.

[75]

Q. **[THE COURT]** Why?

A. **[JUROR 17]** Well, because I lost my job in November, shortly after I filled out this questionnaire, and I've been out of work since that time. And I'm presently looking for a job, and I think that it would be a financial burden for me to be on a case for any length of time.

Q. You will be reimbursed at $40 a day plus expenses, and it will go to 50 a day plus expenses after 30 days. And we won't be meeting on Fridays, so you can look for work on Friday or Saturday.

A. Well, it would be pretty tough right now to get hired, though. If I got on the jury and I go in and I -- if I would get a job and they would say, okay, well, report to work Monday, and I say I can't, I'm on the Enron jury.

Q. Let us think about that.

A. Yes, sir.

Q. Thank you.

We're going to take a break now for about 15 minutes. The last three people are 13, 16 and 17. Are there any challenges for cause based on that?

A. **[MR. RAMSEY]** No, Judge.

A. **[MR. STRICKLIN]** I have a challenge for cause on Juror Number 17, Michael Draper. I feel like he's holding

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the government to a much higher standard.

Q. **[THE COURT]** I don't think so. He's okay. Now, let me tell you something. Heather, when we come back in 15 minutes, bring back these four people and the next 24. In other words, it will be down through 37 on your list.

A. **[CASE MANAGER]** Okay. Leave the rest of them in the overflow.

Q. **[MR. PETROCELLI]** Do we have time to get coffee? How long are your breaks?

A. **[THE COURT]** They're 15. They're timed to the second.

Q. Can we bring it into the courtroom?

A. Yes. I'm going to tell you I don't want you to bring in a Starbuck's mug.

Q. No. Just downstairs.

A. That's fine.

Q. **[MR. RAMSEY]** Judge, may I suggest one more question to the Court? And that is, what, if anything, assisted them with the questionnaires?

A. **[THE COURT]** Well, I've tried to cover that.

Q. **[MR. PETROCELLI]** Mr. Causey --

A. I asked them a couple of things. Like the guy said, "I haven't read anything."

Q. Except the sports page.

**[77]**

A. **[MR. STRICKLIN]** We haven't gotten there yet.

A. **[MR. PETROCELLI]** It's coming, and during this process I sure would like to know.

**[THE COURT]** Ladies and gentlemen, we're going to take a recess. And it's going to take us probably three or four minutes for each potential juror to come to the bench and talk with us. Instead of having all 96 of you sit there as if you're in a church pew waiting for the sermon to begin, we're going to let the remainder of you wait next door where it's more comfortable. And we're only going to bring in those jurors we think we'll get to in the next hour or so, and the jurors who have already talked to us at the bench can remain next door. So we'll start with Number 19, 15 minutes from now. Thank you.

(A recess was had at 10:39 a.m.)(The following was had before the jury)

Q. **[THE COURT]** Will the last four jurors from the first group beginning with Number 19, please come forward.

Counsel, please return to the bench.

(The following was had at the bench)

Please come forward, Number 19.

We have a few questions. We'll try not to take too much of your time. We have a few followups based on your questionnaire.

You indicated in response to what you have

**[78]**

heard or read about the case, that you read "Fortune" and for the past three years, and that you've read all these other periodicals that we referred to except blogs and you've read the "New York Times" and "The Boston Globe," you must be -- subscribe to more publications than I do.

What do you recall reading -- which of those papers do you read most?

A. **[JUROR 19]** Well, since moving here from Massachusetts in 2001, I haven't been able -- I haven't had access to "The Globe" or "The Times." I spend a lot of time watching the news on TV or reading whatever paper I can pick up on the way to work.

Q. What paper is that normally?

A. Probably "The Chronicle" since I've moved here.

Q. Do you read it cover to cover?

A. No, sir.

Q. Which sections do you normally read?

A. The human interest sections. Sports sections. I'll scan over the first few paragraphs of the headlines.

Q. Do you recall reading any particular articles about this trial or Mr. Skilling or Mr. Lay?

**[79]**

A. No, sir, not in particular.

Q. In the last few days there have just been a barrage.

A. I've tried to keep way from them.

Q. **[MR. PETROCELLI]** It's been hard.

A. **[JUROR 19]** I've tried not to. I've tried to avoid it all.

Q. **[THE COURT]** Do you listen to television regularly?

A. Yeah, in the evening.

Q. Which programs do --

A. Usually the situation comedies.

Q. Do you watch TV news programs at night?

A. If I catch them. If I'm still awake when they come on at 10:00 o'clock.

Q. The local news?

A. Yes, sir.

Q. Do you recall -- do you listen to NPR, for example, on a regular basis?

A. Occasionally. My wife likes to listen to it more than I.

Q. Do you recall any particular discussions of the case or the defendants, listened to the radio or the television?

**[80]**

A. No, sir, not the defendants. Generally about the company.

Q. Any questions?

Q. **[MR. PETROCELLI]** Couple of things. You wrote in your questionnaire that your book about "The Smartest Guys in the Room."

Did you go ahead and read that?

A. **[JUROR 19]** I started reading the first hundred pages and then put it town.

Q. Do you think it would have any effect at all?

A. No, sir. I found the book boring. Not something I'd be interested in reading.

Q. I notice you talk about greed in your questionnaire?

A. Yes, sir.

Q. Do you think that Jeff Skilling or Ken Lay were greedy and that somehow is relevant to their breaking the law?

A. I don't know them well enough to determine that. I think that question was in regards to my experiences in the insurance company I used to work at. Those people were greedy. I don't know these gentlemen.

Q. Do you think that would affect you in any way hearing about this case, given that Enron

**[81]**

did collapse?

A. No, sir. If I had a dime for every company that has collapsed, none of us would have to be here perhaps.

Q. **[THE COURT]** Mr. Stricklin?

A. **[MR. STRICKLIN]** Nothing from me.

Q. **[MR. RAMSEY]** I have a question.

A. **[THE COURT]** Oh, I'm sorry.

Q. **[MR. RAMSEY]** On 39B, Your Honor.

Sir, you wrote in answer to 39B "Professional opinion" --

A. **[JUROR 19]** Sir, I can't hear you.

Q. You wrote on Part B "Professional opinion based upon training and experience and news reports of a" -- does that say "legal outcomes"?

A. Legal outcomes.

Q. "...previous cases and company employees' statements."

That's a pretty deep knowledge base. Can you illuminate for the Court and the counsel?

A. Professional opinion on what, sir? I don't know what -- that seems like a follow-up question.

A. It is. It is.

Q. **[THE COURT]** You answered that you thought -- with respect to the collapse of Enron, you thought better

**[82]**

business ethical practices might have prevented the outcomes?

A **[JUROR 19]** Yes, sir.

Q. And that was the follow-up?

A. Yes, sir.

Q. Can you tell us what you meant by that?

A. I've had a lot of professional experience in terms of training, in terms of organizational leadership and things of that nature. And it seemed as though the company may have collapsed as a result of, you know, some form of dealings in areas that perhaps weren't as lucrative as they could have been or something of that nature, sir.

My training in organizational leadership suggests that perhaps these folks may have misread the, you know, the lay of the land, if you will.

Q. Well, embedded in this opinion is there any idea that because of the collapse these people must have done some crime?

A. No, sir. No, sir. People can make mistakes as a result of running organizations. That was perhaps human error.

Q. Mr. Stricklin?

A. **[MR. STRICKLIN]** Nothing from me, Your Honor.

**[83]**

Q. **[THE COURT]** Thank you, sir.

A. **[MR. PETROCELLI]** Thank you.

Q. Juror Number 20. Would you please come forward.

How do you do?

A. **[JUROR 20]** Fine.

Q. **[THE COURT]** We just have a few follow-up questions. There are no right or wrong answers, but there were some questions.

A. **[MR. PETROCELLI]** Slide down a little. Thank you so much.

Q. One of the questions said, "are you angry about what happened with Enron?"

And you said, "It makes me angry that so many people lost their jobs and their retirement savings."

And then in response to another question, you said, "I think that a lot of the 401 savings have made the most impact on me especially because I have been forced to forfeit my own 401(k) funds to survive layoffs."

What company did you have to forfeit your funds?

A. **[JUROR 20]** Well, sir, I've been laid off about four or five times, actually. And I don't recall which one it was, quite frankly. I had a series of employers in the '90s. The jobs lasted about two years each. And I would

**[84]**

get laid off. The first job I had was 10 years. That was University Savings. And then after that, it was kind of one after another. So it was a survival -- you know, voluntary cashout just because I needed money because I didn't have a job.

Q. **[THE COURT]** Well, you heard what I said to the whole jury panel about "We don't want jurors who are basically here out of sympathy for the people that lost their jobs"?

A. I understand.

Q. And you would be a person who could be sympathetic because you faced the same plight.

Do you feel that even before the government has presented any evidence that these defendants are probably guilty of something?

A. I don't have enough information to know that, quite honestly. I was out of state when it happened, and then personal circumstances kept me from paying much attention.

Q. You indicated that you read "The Chronicle" and you watch local news.

How frequently do you read "The Chronicle"?

A. Two, three, four times a week. I don't know.

**[85]**

Q. Do you read it cover to cover? Or are you like me, wait for the guy to come in the mornings so you can read it?

A. No. I'm a browser. I go through and pick out whatever comes to my attention.

Q. Do you remember reading any particular articles about this case or Mr. Lay or Mr. Skilling?

A. Not until just recently this week, but nothing --

Q. And there have been a lot of articles this week.

A. Yeah.

Q. Do you recall any particular articles you've read in the last week or so?

A. Not word for word, no.

Q. Did you read all the articles in the Sunday "Chronicle"?

A. Some of them.

Q. Which ones do you remember reading?

A. The one about the trial, I think, and how the trial was going to work.

Q. What time you had to get here?

A. What time to get here, what I could expect, that sort of thing.

**[86]**

Q. I hope it's not as bad as you feared from the article.

In response to a question about whether you wanted to be on the jury, you said, "I don't really know if I want to be on this jury due to the time it will take; however, due to the things mentioned in '74 [sic], I do know that I was not fully aware of all the facts regarding Enron's fall in the media coverage." And you indicated that you were out of town.

We don't want people to know the facts. We want people who will listen to the evidence in this case.

Can you -- are you concerned that you don't know enough about the case, or that you know too much about the case? I'm not sure what you meant by that.

A. It was just I don't know enough about the facts to make a decision either way. I mean --

Q. Well --

A. Which I'm not saying that's good or bad; that's just the truth.

A. Okay. That's what we want, truthful answers.

Q. **[MR. PETROCELLI]** Thanks for your candor. I represent Mr. Skilling.

Given your personal experience of the loss

**[87]**

of your retirement fund, do you have a sense that Mr. Skilling is responsible and you blame Mr. Skilling, or Mr. Lay, for that matter, for folks' losing their funds?

A. **[JUROR 20]** To personally blame them, no. I feel like if a person is responsible for a company, they should know what's going on with them. I can't help but feel bad. I mean, I'm not out to get him or anything like that. That's not what I'm saying.

Q. Does that --

A. My -- my pull-out was voluntary.

Q. Voluntary?

A. Voluntary. I wasn't forced into it. I just had to do it to survive.

Q. So do you think you would be able to be fair and impartial to Mr. Skilling and Mr. Lay even though folks did lose their savings and their jobs?

A. I think I could be. I mean, I know that it's survivable. I've done it; other people can do it.

A. You've done it.

Q. **[MR. RAMSEY]** 39 -- answer to 39, ma'am, seems to me a little contradictive. You said, first of all, not enough corporate controls. And then you complain a little bit about Sarbanes-Oxley.

A. **[JUROR 20]** Yeah.

**[88]**

Q. So you blame Enron for causing Sarbanes-Oxley?

A. It's my understanding that's why we have it. It's a little tedious. You get audited about seven times a year. It seems like you're always getting audited. I work in the financial environment, so I suppose that's to be expected.

Q. **[THE COURT]** Mr. Stricklin?

A. **[MR. STRICKLIN]** Nothing from me, Your Honor.

Q. Thank you, ma'am.

A. **[JUROR 20]** Thank you.

Q. **[THE COURT]** Number 24, please.

A. **[MR. PETROCELLI]** 24 is dismissed.

Q. That's true. Number 28.

A. **[JUROR 28]** Hello.

Q. **[THE COURT]** How do you do? Thank you for waiting.

A. Sure.

Q. We just have a few questions based upon your questionnaire.

You indicated that you had heard or read about Enron mostly on television and others' views from "The Chronicle," but headlines only. Not interested."

I take it that you're not one of these people who gets the paper --

**[89]**

A. No.

Q. -- and break it amongst -- my wife and I divide it among sections and read each section. Do you do that?

A. No. I don't even take the paper. I don't get a paper. The only time I get a paper is if someone brings it and leaves it in my office or if the next-door neighbor says, "Do you want to read the paper?" So I just scan the headlines and that's about it.

Q. There have been a lot of articles over the last few days, in "The Chronicle" in particular.

Did you happen to read "The Chronicle"?

A. No.

Q. What do you recall about watching the television?

A. Just snippets of Mr. Lay, you know, being taken in or out of the courtroom. And that's about it. I haven't really sat and listened to the news. If I'm passing through, that's what I hear or what I see.

Q. And the Question 68 you were asked: "Of all the things that you have heard or read about Enron, what stands out in your mind?"

And you answered: "The top officials appear guilty."

A. Appear.

**[90]**

Q. Tell us what you base that on and what you meant by that.

A. Only because they're being brought up -- you know, brought up on charges. That's all.

Q. You heard what I said about --

A. Yes, I did.

Q. -- the indictment and the presumption of innocence?

A. Yes, I did.

Q. Do you have any reservations about your ability to follow those instructions?

A. No, I don't.

Q. You indicated that you served on a juror -- jury before as a civil case and you liked doing your duty.

A. Uh-huh.

Q. The burden in a civil case is merely a preponderance of the evidence. In a criminal case, it's guilt beyond a reasonable doubt, which is a much heavier burden.

A. Yes.

Q. Could you hold the government to that burden?

A. Yes.

Q. Do you have any follow-up?

**[91]**

Q. **[MR. PETROCELLI]** I do.

Ma'am, I represent Mr. Skilling. I read your comments in your questionnaire about bringing closure.

A. **[JUROR 28]** Uh-huh.

Q. And what I was interested in knowing is how, in your mind, will the acquittal of Mr. Skilling and Mr. Lay bring closure?

A. Well, it will prove one way or the other their innocence or guilt.

Q. And what did you mean by "bring closure"?

A. Closure for everybody on this particular -- the particular charges. They will be finally put to rest and people can stop talking about it.

Q. **[MR. RAMSEY]** May I, Your Honor?

There are a couple of questions. And as Your Honor said, there are no right or wrong answers to these.

A. **[JUROR 28]** Okay.

Q. On 24, you said that you thought they were overpaid. On 39, you said you thought -- what caused the collapse? You said greed.

Only you can give us a truthful answer to this.

A. Yes.

**[92]**

Q. Do you start off with the notion that Mr. Lay or Mr. Skilling were greedy? If you do, just tell us.

A. No. That's an assumption for anyone, I think, not particularly them in particular, but anyone that would be in a high position that would be being paid a lot of money.

Q. Do you believe that anybody in such a position would be a greedy person?

A. Not always.

Q. Do you start off --

Q. **[THE COURT]** That's all.

Mr. Stricklin?

A. **[MR. STRICKLIN]** Nothing from me.
Q. Okay. Have a seat.
Mr. Ramsey, you're going beyond what I intend this. I don't intend individual voir dire. I'm going to question them about personal matters and responses to questions that indicate that they might not be fair.
Now I'm going to not allow you-all to ask individual questions if you abuse that.
Bring the next person up.
A. **[MR. RAMSEY]** Let me get it clear, Your Honor. I thought greed was within the game.
Q. **[THE COURT]** Well, it's been close to the
**[93]**
border, and you're pressing the border with each juror.
Please come up, please. Juror Number 29. Right around here, ma'am.
A. **[JUROR 29]** Okay.
Q. We just have a few follow-up questions.
You indicated that you had friends who worked at Enron, in particular a friend who worked from '96 to 2002 and then that friend was laid off.
Can you tell us a little bit about that relationship? Is it a close friend or somebody who you just knew casually?
A. Not really a close friend. She worked for Tenneco at the time. And then when Tenneco changed its office to go to Connecticut, she went to work for Enron. And then, of course, when the Enron thing happened, she came back to El Paso and worked for El Paso. And now she's no longer there. I don't really know who she's working for.
Q. You haven't kept up with her?
A. No.

Q. Is that the same friend who may have lost some money with her 401?

A. Yes. Uh-huh.

Q. And do you know how much she lost?

**[94]**

A. I have no idea, sir.

Q. In response to another question, you said, "Our stock in 401(k) went down like most stock because of Enron."

Is that your company's 401(k)?

A. The El Paso 401(k), yes.

Q. Do you know how much it personally affected your 401(k) plan?

A. Just mine or my mine and my husband's?

Q. Both.

A. Both? We probably lost, like everybody else, Judge, about 50 or 60,000 dollars.

Q. And I assume that's a significant amount of money.

A. It is.

Q. Do you hold the officers of Enron responsible for that?

A. After what you said this morning, I'll have to probably just -- I don't know. Be more -- what do I want to say? Listen to more of what the people have to say here. I don't know that -- it was probably the boards of all the companies, Judge, that had -- they all wanted to be like Enron, especially El Paso, because I worked up in -- I was doing temp work up on the floor. And they all wanted to be like Enron, and so they went into these

**[95]**

different -- broadband and that kind of thing.

Q. You indicated in response to one question which said you have an opinion about the guilt or innocence of people?

A. Uh-huh.

Q. You said that Lay did not do his job. Skilling is not an honest man.

A. Uh-huh.

Q. You sound like you've already assumed that they're guilty of something.

A. The media -- at one time when I was following all of this, the media can be very biased, half-truths. But now I put it aside and, you know, didn't read anything more until just the last week or so.

I really, Judge, in all honesty, cannot tell you one way or the other how I feel right now about those two gentlemen.

Q. Well, can you conscientiously presume that they are innocent of all these charges?

A Until proven guilty, yes.

Q. Until proven guilty?

A. Yes.

Q. You don't -- what have you read about the case? You really have read a lot. You take a lot of various publications.

**[96]**

A. Uh-huh. We do.

Q. Can you tell me what you recall reading about the case?

A. About the case, mostly about how loose they were with people's -- how dishonest they were. But this was some of the media, you know, "Newsweek" and "The Houston Chronicle" and all of that.

Ask me the question again, please.

Q. All right. Do you recall reading any particular articles in any publication about the collapse of Enron or Mr. Skilling or Mr. Lay?

A. Uh-huh. Sure.

Q. What stands out in your mind about those articles?

A. Mr. Lay, not so much, but of Mr. Skilling, how arrogant he was supposedly. They made -- intimidated people, supposedly. That's about it, I mean.

Q. And what programs in the media, television, radio, do you recall listening to or watching about this?

A. Pretty much all three of them, all the networks, CNN and Fox, I guess.

Q. In response to questions about Mr. Lay --

A. Uh-huh.

**[97]**

Q. -- you said your opinion was you were disappointed that he didn't follow through with information that he was given.

A. Uh-huh.

Q. That is what he was paid to do and paid well.

Do you think he should have known what was going on and didn't care?

A. Well, I don't think he didn't care. I really think he was not on top of things the way he should have been. But at the time, he had retired already, had he not?

Q. I'm not sure.

A. I think.

Q. And you said Mr. Skilling is not an honest man?

A. Yes.

Q. What do you base that on?

A. What I read about how arrogant he was and the way they rated people for raises at Enron, that kind of thing.

Q. You already -- it sounds like you already think these people are guilty of something?

A. I did at the beginning, but I don't now.

**[98]**

Q. What has changed your mind?

A. What you said, that they are going to have to present, you know, whether they're -- their case and he's going to have to present his case. And then, I have to be open-minded enough to decide then whether they're guilty or not.

Q. Mr. Petrocelli?

A. **[MR. PETROCELLI]** No. The Court's covered it.

Q. **[THE COURT]** Mr. Ramsey?

Q. **[MR. RAMSEY]** Just one question, ma'am.

Have you read something between the time you followed this, that this is not an honest man, and today that makes you think your view of whether he's honest or not?

A. **[JUROR 29]** No, sir, I have not, not until what the Judge said this morning. I just quit reading about it. You know, like I may sound that I don't care what happened to the people, but -- and callous; but after a while, it's just like here in Houston, we have so many murders and all of that, after a while you just -- or I did anyway. I shouldn't put everybody in that.

Q. What specifically do you think Mr. Lay did not follow through on?

A. What was going on in his company.

Q. Do you believe there was something

**[99]**

wrong going on with his company?

A. He should have known, yes, sir.

Q. Was there something wrong going on in this company, do you believe?
A. From what the media has said.
Q. Do you believe that?
A. I did at the time again, sir; but now I just -- I can't, you know.
Q. You can't say one way or the other?
A. No, sir, I can't. Thank you.
Q. And the federal court will permit it, and I have to press it. We need a positive answer.
A. Sure.
Q. Did you believe at one time that he was not an honest man and Mr. Lay did not follow through and you believed that there was corruption at the company?
A. Yes, at the time. At some time, yes.
Q. If you have any doubt that you can set that aside -- and it's no sin, but you need to tell us that.
A. I think I can set that aside now, sir, yes.
Q. Is there any doubt in your mind that you can presume, as you look at these people in Court,

**[100]**

that you can?
A. I can.
Q. That you cannot?
A. At this point, after what you said, that he explained so well, you know, that we should all put aside what we believed at the time and what we believe now, I presume that they're not guilty until proven guilty, sir.
Q. **[THE COURT]** Do you have any questions?
A **[MR. STRICKLIN]** Nothing, Your Honor.
Q. Thank you ma'am.
A. **[JUROR 29]** Thank you.
Q. **[THE COURT]** All right. Any challenges?
A. **[MR. PETROCELLI]** I'd like to challenge.

Q. Just a second. Let me finish the questioning.
A. I can't wait.
Q. Any challenge to 19, 20, 28 and 29?
A. **[MR. RAMSEY]** 29 Your Honor.
A. **[MR. PETROCELLI]** Last one, Judge. Financial interest and also unshakable bias.
Q. **[THE COURT]** I think she answered candidly she's going to have an open mind now. I was prepared to strike her, but your questions basically persuaded --
A. Judge, she's biased against. Judge. She's biased.

Q. **[MR. RAMSEY]** May I argue --
A. **[MR. PETROCELLI]** Let me finish.
A. I'm sorry.
Q. She blames Enron for the loss of her money. And even when you pressed, let alone what Mr. Ramsey did, she just said, look, she came in here thinking they're guilty, and, "Yeah, I think I could be fair based on what you said," but you looked her in the eye, Judge, and she didn't. It was obvious.

Plus she has a financial interest. That's a big sum of money that she attributes to Enron. And I mean, this is about one of the clearest cases of bias we have and pressed guilty on the questionnaire. She's unsure she checked on the box. And even now she said -- she kept saying until they prove guilty and they have to present evidence. She obviously is expecting us to present evidence.

Q. **[THE COURT]** She's talking about the government.
A. **[MR. PETROCELLI]** No, Your Honor. I quoted her, and you can look at the record. They're

going to have to present their case, she said, okay? And she said that a couple of times.

Q. What do you have to say?

A. **[MR. STRICKLIN]** Your Honor, we have to take her at her word. When she had previously said earlier what her

**[102]**

opinions were, and she said earlier what her opinions were, and that based upon the law, they've changed. That's what we ask of our jurors.

Q. **[THE COURT]** I agree. Motion is denied.

A. **[MR. RAMSEY]** I didn't get to talk.

Q. Are there any others among these four that you want to challenge for cause?

Mr. Petrocelli.

A. **[MR. PETROCELLI]** No, Judge.

Q. **[THE COURT]** Do you want to challenge 19, 20 or 28?

A. No, Judge just the 29.

A. All right.

Q. **[CASE MANAGER]** Is it possible to let them be seated maybe within the jury box?

A. **[THE COURT]** That's fine. We're going to bring up the next 12 people starting with Number 33.

Q. **[MR. RAMSEY]** Your Honor, respectfully based on the overruling of challenge for cause on 29, we ask for an additional peremptory challenge.

A. **[THE COURT]** All right. It's denied.

Q. **[THE COURT]** Mr. Ramsey, have you all figured out who that person was that was called in about? Have you been able to identify him?

A. **[MR. PETROCELLI]** We have theories.

**[103]**

A. **[MR. STRICKLIN]** We have plenty.

Q. **[THE COURT]** Well, let me know when that person comes up. Signal me somehow.

A. **[MR. RAMSEY]** We will do our best, Your Honor.

Q. Please come up, Number 33.

How do you do? Thank you for your patience. We have a few follow-up questions.

What was it about A&M that caused you not to finish your degree?

A. **[JUROR 33]** It wasn't A&M; it was just me.

Q. **[THE COURT]** Just checking. You said that you had family members who work for law enforcement officers and one was an HPD officer who is currently employed.

How is that person related to you?

A. It's a friend.

Q. Close friend?

A. Acquaintance. Acquaintance, friend.

Q. I mean, does he talk to you about what he does for HPD?

A. We see him probably like once every -- I don't know -- three or four months. It's more of a mutual friend get-togethers.

Q. Do you know what he does for the police department?

A. Homicide. Detective.

**[104]**

Q. Is there anything about that experience that would prevent you from being fair and impartial in this case?

A. No, sir.

Q. In response to questions about what you've heard and read, you said that you read "The Houston Chronicle," you've talked to friends and family, odds and ends on television. There has been a lot of media attention about this case.

Have you -- do you recall reading anything in particular about this case?

A. No, not really, because, to be honest -- I hate to say this -- but I haven't found it very interesting.

Q. Why is that?

A. I don't really have anybody personally involved, and there's a lot of corporate structures across the nation that fail. And I don't know -- in the world strife. It's interesting in one way, but corporate politics I don't understand.

Q. Do you recall listening to any particular programs about the case?

A. No. You know, when they do news coverage and all, I mean, they have -- you know, just the regular little tidbits, like something here or somebody.

**[105]**

When -- like when they have -- I guess he was a co-defendant at one point, now he's pled guilty already.

Q. What do you think about that, the fact that Mr. Causey pled guilty?

A. That's his decision. I mean, he worked something out.

Q. Do you think that because he pled guilty there must be some other people who are guilty?

A. It makes no difference. I mean, it's just his decision. Whatever he did.

Q. Is there anything about this case that you think we need to know about, anything about your background that would bear on whether you can base your decision in this case solely on the evidence?

A. No, sir, none that I can think of.

Q. Did you read The Houston Chronicle over the weekend?

A. No. My father-in-law mentioned that he did.
Q. What do you read in your spare time?
A. Novels. I watch TV a lot.
Q. Okay.
A. My husband is the one that reads the paper. What I do is stop it when he goes offshore, and

**[106]**

then I just wait for him to come back.
Q. Did you read Sunday's paper?
A. I read the comics and scheduled my days around American Idol.
Q. Okay. Mr. Petrocelli?
A. **[MR. PETROCELLI]** No, Judge.
Q. **[THE COURT]** Mr. Ramsey?
A. **[MR. RAMSEY]** Nothing, Judge.
Q. **[THE COURT]** Thank you, ma'am.

Number 36. Number 36, please come forward, ma'am. How do you do? Thank you for waiting. We just have a few questions based on your questionnaires.

When asked have you read or heard anything about the Enron case, you said, "Yes, TV, news, really haven't paid much attention."

There's really been a lot of publicity over the last 10 days. You can't turn on the television or pick up the "Chronicle" without hearing something. Have you been reading the "Chronicle" in the last week or so?

A. **[JUROR 36]** No. I didn't even read it yesterday. Even though it was in the front page, I just laid it down just because I thought I shouldn't. But, of course, I mean, you know, you do see. But it's just not something that affected me or anybody close to me, so it's not something I've paid a lot of attention to.

**[107]**

Q. What TV shows or news programs do you normally watch?

A. Like if I get home in time, Channel 13 in the evening, Good Morning America, back and forth, getting dressed in the morning. But there's not a program -- I'm not a good TV watcher.

Q. Do you remember anything in particular about what you have seen on television about this case?

A. No. Mostly -- I did see, walking through yesterday, somebody, you know, lost a million on this thing and that kind of stuff.

Q. If you were selected, can you base your decision on what you hear in this courtroom?

A. Absolutely.

Q. Do you tend to believe what you see on television?

A. No.

Q. Why is that?

A. Well, because it's like kids. You teach them, you know, the cars that do flips and all kinds of stuff on the commercials, you know, they don't do that in real life. They don't do that. TV is made up, and you can't trust them. I don't think you can actually trust everything you read in the newspaper. Everybody has an

**[108]**

opinion, so you have to look at all of it and kind of make up your own mind. It's all kind of made up.

Q. Mr. Petrocelli?

A. **[MR. PETROCELLI]** No, judge.

Q. **[THE COURT]** Mr. Ramsey?

Q. **[MR. RAMSEY]** Ma'am, do you think that as you stand there now -- just based on all that you've read or heard about the case, do you think that Mr. Lay is guilty even a little bit?

A. **[JUROR 36]** You know, I don't know. I really don't. I know that people are charged and found innocent and they're charged and found guilty.

Q. **[THE COURT]** Mr. Stricklin?

A. **[MR. STRICKLIN]** Nothing, Your Honor.

Q. Thank you.

Juror Number 38, would you please come forward and let us talk to you for a second.

How are you? Thank you for your patience. We have a few follow-up questions based upon your answers to the questionnaire. You indicated that you watch Channel 13, read the "Chronicle," listen to the radio and Internet news sources. Do you read the "Chronicle" every day?

A. **[JUROR 38]** No.

Q. **[THE COURT]** How often do you read it?

**[109]**

A. Once a week.

Q. Sunday or --

A. Sunday.

Q. Did you read yesterday's paper?

A. Actually, I got it, but I didn't never get into it. I had a lot of work to do that I didn't finish.

Q. What do you recall reading in the "Chronicle" about the case when you did read it?

A. Just that it was beginning today and jury selection was starting.

Q. Did you read the big articles about Mr. Lay or Mr. Skilling or Mr. Petrocelli or Mr. Ramsey?

Q. **[MR. PETROCELLI]** Or Your Honor?

A. **[JUROR 38]** Honestly, no, I did not.

Q. **[THE COURT]** Okay. What do you listen to normally on the television? Which programs do you watch?

A. Just the local news, sometimes CNN, Fox.

Q. Do you recall any particular mention of the case on any of those TV sources? I mean, do you recall anything you've heard on television about the case?
A. Not off the top of my head, no. There's nothing in particular.

**[110]**

Q. In response to a question about whether you have any connections with any of the defendants you said, "Ex-boyfriend's family is friends with Ken Lay's sister, Sharon, spent small amount of time with her in the past."
A. Uh-huh.
Q. How long ago was that?
A. I'm thinking about three, three and a half years ago.
Q And how often did you visit with her?
A. Throughout a couple of summers. We spent a lot of time with her. Probably -- I would say twice a month over -- within a three-month time span for two summers.
Q. And how long ago has that been?
A. Three, four years ago.
Q. Did you ever meet Mr. Lay?
A. No.
Q. Did his sister ever talk about the collapse of Enron?
A. No.
Q. Is there anything about that experience that would prevent you from being a fair and impartial juror?

**[111]**

A. No.
A. **[MR. PETROCELLI]** Nothing, Judge.
Q **[THE COURT]** Mr. Ramsey?

Q. **[MR. RAMSEY]** Nothing, Judge -- just one question. What is the Monarch School?

A. **[JUROR 38]** That's where I work. It's a therapeutic school, kids with neurological differences and -- yeah, that's it.

Q. **[THE COURT]** Thank you.

Juror Number 43, would you please come forward, please, sir. How do you do, sir? Thank you for your patience.

A. **[JUROR 43]** Yes, sir.

Q. I have a few questions based upon your questionnaire. You said that you watch Channel 13 news. Do you watch it every day?

A. No.

Q. How often do you watch it?

A. At night. Like one or two -- I miss one day, and then I watch it.

Q. Do you watch the whole program or just certain parts of it?

A. Mostly like five minutes when it first comes on and then the sports and then the weather.

Q. Okay. Do you remember anything

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that you've heard about this case on Channel 13?

A. Not recently, huh-uh.

Q. Do you take the "Chronicle" or any other newspaper?

A. Yeah, every blue moon.

Q. Pardon me?

A. Every blue moon.

Q. Every blue moon?

A. Yeah.

Q. Did you read the "Chronicle" Sunday?

A. No.

Q. Do you recall any mention in any of the media about this lawsuit?

A. I can't remember.

Q. In one question, you were asked, "Based on anything you've heard or read or been told, do you have any opinion about the guilt or innocence of these people?"

And then you said, "They are guilty because the people lost their money." Can you tell us what you meant by that?

A. Because they were working so hard and -- so I was just saying, well, everybody have like a right. You know, they shouldn't have lost it all. They

**[113]**

should just get something, but they took it all. And so they just made everybody like broken homes.

Q. Do you think the defendants took all the money from the employees?

A. Uh-huh.

Q. That's what you think?

A. Yes.

Q. Well, do you think they're already guilty of something?

A. I haven't heard it all, so I really can't say.

Q. Well, when you say the defendants took all the money, there's -- are you saying that they were just paid too much or are you saying that they stole money from the company? I'm not clear what you mean.

A. Stole.

Q. They stole money?

A. Yes.

Q. That's what you think?

A. Yes.

Q. Have a seat over there, sir.

Mr. Stricklin, do you honestly think you can rehabilitate him?

A. **[MR. STRICKLIN]** No, Your Honor.

Q. **[THE COURT]** He's excused for cause. That's

**[114]**

Number 43.

I assume the defendants do not object?

A. **[MR. PETROCELLI]** We don't object, Your Honor.

Q. All right. Any other -- 33, 36.

A. No, Judge.

Q. Do you challenge 36, 33 or 38?

A. **[MR. RAMSEY]** No, sir.

Q. **[THE COURT]** Do you?

A. **[MR. STRICKLIN]** No, Your Honor.

Q. **[THE COURT]** All right. Number 45, would you please come forward, sir. This is the fellow we already talked about before?

A. **[MR. PETROCELLI]** Yes.

Q. Do you remember him?

A. Yes.

Q, How do you do?

A. **[JUROR 45]** I'm all right.

Q. **[THE COURT]** I want to just follow-up on what you said when we talked to you earlier. Do you think you can listen to the evidence and answer questions based on the evidence?

A. Based on evidence?

Q Yes.

A. I mean, there's a possibility. But off of my, you know, growing up, you know, everybody is a

**[115]**

friend, everybody is involved before. We're all here because somebody motivated us. My motivation is I --

Q. Your motivation is what?

A. My motivation is I'm really -- I could listen to the evidence, but I couldn't give you a judgment based on any values.

Q. Why not?

A. I just don't feel it's right. I mean, everybody has a pre -- you can prejudge a person. He's good. No, he's guilty. No, he's innocent. But I don't believe -- at the same time, I don't believe it's even right to prejudge a person. I do it a lot, but it's not anything that I would like to do. It's not anything that I would --

Q. Well, we don't want you to prejudge people. We want you to listen to the evidence.

A. Listen to the evidence and make an inference on the evidence of guilt.

Q. Could you do that?

A. No, sir.

Q. Do you have any questions?

A. **[MR. PETROCELLI]** No.

Q. **[THE COURT]** Do you?

A. **[MR. STRICKLIN]** No, Your Honor.

Q. **[MR. RAMSEY]** If the Judge gave you the law that

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you would have to just listen to the evidence and make an up or down decision about guilt or innocence, could you follow that law?

A. **[JUROR 45]** If it was like a definite, definite, set in stone -- I mean, other than that, I really can't.

Q. Well, it has to be beyond a reasonable doubt. That means beyond hesitation.

A. Beyond hesitation.

Q. Could you do that? It has to be pretty convincing proof.

A. You're telling me it has to be like a stiff answer?

Q. Well, then it would have to be a guilty or not guilty answer.

A. Exactly. And I can't really do that. I'm not here to judge.

Q. **[THE COURT]** Go over there and have a seat. Any side challenge to him for cause?

A. **[MR. STRICKLIN]** I do.

Q. He said he couldn't follow the instructions and can't judge, so I'm going to excuse him for cause.

Number 47. Number 47, ma'am.

**[MR. RAMSEY]** Your Honor, we again respectfully request an additional peremptory challenge.

**[117]**

Q. **[THE COURT]** That's denied.

Please come forward, ma'am. How do you do? Thank you for your patience. We have a few questions to you based on your questionnaire.

You indicated that your husband once -- you had a negative experience from law enforcement because your husband was pulled over. And I gather he was not actually prosecuted. But in your explanation sheet, it goes into that in some detail. Do you think that -- you got a bad impression of those law enforcement officers?

A. **[JUROR 47]** Correct.

Q. There may be FBI agents or other people testifying in this case.

A. Right.

Q. Do you assume that anybody who works for law enforcement is probably suspect?

A. No.

Q. What would you think if the federal government called an FBI officer who testified? How would you evaluate that person's credibility?

A. I would just look at him just like me, you because I don't really -- I haven't had an incident where he affected me -- if that makes sense.

Q. That's perfect -- it makes perfect sense.

**[118]**

In response to one question, "What was the cause of Enron," you said, "Should have managed their books better. Do not put in fictitious figures when you know it will not come out right in the end."

Can you tell us what you meant by that?

A. Well, just -- I'm just going by my -- no, probably not. I mean, I can answer it.

Q. That's what we mean. What did you mean? My question wasn't very good.

A. I'm just going by like how I balance my books. And if I add or subtract different things, it's not going to come out right. And I don't know that that's necessarily what happened.

Q. Do you think that because Enron collapsed that Mr. Skilling or Mr. Lay must have done something wrong?

A. No. No.

Q. You heard what I said about the presumption of innocence. If you are selected on that jury, you're going to listen to a lot of evidence. Can you presume that they're innocent until the government proves their guilt beyond a reasonable doubt?

A. Yes, sir.

Q. You indicate that you read the Chronicle and Channel 13 news. How often do you read the

**[119]**

Chronicle?

A. Maybe once every three or four months.

Q. Three or four months?

A. It's not very often.

Q. You don't subscribe to it?

A. No, sir.

Q. And did you read it this past weekend when there were a lot of discussions about the case?

A. No.

Q. What do you recall hearing on Channel 13 news about the case?

A. Just how all those people, you know, lost their jobs, and just briefly talking about Mr. Lay and Mr. Skilling.

Q. What do you remember about Mr. Lay or Mr. Skilling?

A. Nothing. I just thought how awful, you know. I felt sorry -- you know, felt sorry for them.

Q. Okay. You asked -- you had opinions about both of them. Basically, you said, as I read your answer, "If they did something wrong, they should have to pay the price. If they did not, they should be cleared." Is that still your view?

A. Correct.

**[120]**

Q. Do you think that they must have done something wrong or Enron would not have collapsed -- I mean something criminally wrong?

A. Not necessarily.

Q. What do you think?

A. I mean, there's other people handling different things, their books or -- "accountants," I guess that's the correct word. And maybe they -- maybe they didn't know.

Q. Can you start this case with an open mind? That's what we're really asking.

A. Yes.

Q. **[MR. PETROCELLI]** Do you have an opinion right now that there was fraud and fictitious figures in Enron's books?

A. **[JUROR 47]** I don't have any opinion about that.

Q. And if you sit on this jury, can you start fresh and not assume that there was anything wrong with the company?

A. Yes.

A. Okay. Thank you.

Q. **[MR. RAMSEY]** One compensation question, Your Honor. When you answered the question about compensation for executives, you said, "They're getting rich off the little guy." These are both corporate executives, of

**[121]**

course. Do you start kind of leaning against them, for them; or is that just because of their compensation?

A. **[JUROR 47]** No.

Q. Do you tend to lean against them?

A. Would I lean against them?

Q. Right.

A. No.

Q. The answer was getting rich off the little guy. Just be as fair with us as you can. There is no right or wrong answers here.

A. No.

Q. **[THE COURT]**"No" what?

A. **[JUROR 47]** No, I don't think that they can get rich off the little guy. I mean, I have an uncle that -- he was wealthy, but he didn't get rich off the little -- people like me.

Q. Do you think Mr. Lay and Mr. Skilling took advantage of the employees?

A. No.

Q. Mr. Stricklin?

Q. **[MR. STRICKLIN]** Ma'am, just a few moments ago you said you felt sorry for the defendants?

A. **[JUROR 47]** Yes, sir.

Q. The Judge will instruct you that sympathy should not enter into your verdict. Is that

**[122]**

something you can set aside? If you felt sorry for them, you would judge this case based solely on the evidence?

A. Yes.

Q. And not by any sympathies you may feel?

A. Yes.

Q. You can do that?

A. Yes.

Q. **[THE COURT]** Thank you, ma'am.

Juror Number 48, would you please come forward. How do you do? Thank you for your patience.

A. **[JUROR 48]** Not at all.

Q. We have a few questions here based on your questionnaire. You indicated that you had several friends who worked for Enron. I won't list them all by name. And they worked there in the '90s and 2000s. One is still employed with a subsidiary, one resigned and another you think resigned. Did these friends ever discuss with you the reasons for the collapse of Enron?

A. They did not, no.

Q. Did they lose money because of the collapse?

A. I was told that Jimmy had lost a lot, yeah.

Q. How close with you is Jimmy?

**[123]**

A. I played golf with him two or three times. Not more than an acquaintance. Not a friend.

Q. Do you work with him now?

A. I don't.

Q. Do you socialize in each other's homes?

A. No.

Q. Has he related any specific occurrences that happened at Enron?

A. He's actually not discussed it.

Q. You indicated that you had a brother who pled guilty to a crime and you don't think he was treated fairly. I don't want to pry, but can you tell us a little bit about that experience?

A. His -- it was a federal offense. The prosecution or the DA, I felt, was a little heavy handed with the way they sort of leveraged their power, threatening a much greater penalty if he were to plead not guilty. So that was -- it was -- he was quite intimidated by that prospect.

Q. What did he plead guilty to?

A. Sexual assault of a child.

Q. And how long ago was that?

A. That was nearly six years ago.

Q. Where did that occur?

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A. On federal property.

Q. No. What state or --

A. Texas.

Q. In this court here?

A. No. It would be in the Western District, I think.

Q. What sentence did he receive?

A. It was like 66 months and 60 months of -- or supervised release.

Q. So you think the government abused its power in that case?

A. In that case, I thought -- I just didn't appreciate the leverage. I didn't feel that he had a good opportunity to -- it was -- it didn't seem fair and, also, it was subject to mandatory minimum. And although he did get downward departure for the crime itself, it seemed disproportionate in that -- grossly so.

Q. Excuse me. You indicated in response to Question 74, "I believe that judges have power -- I believe that jurors have power equal to the judges and the jurors can determine the legitimacy of the law."

Now, I think when I described what we mean by a fair and impartial juror that definition presupposes that you will follow my instructions concerning the law.

**[125]**

If you disagree with one of my instructions, are you going to substitute your own notion about what the law should be?

A. It's a good question. You know, we are there to judge matters of fact. And it's my understanding that as a juror, as a citizen, I also judge matters of law and, in fact, that is one of the primary goals of a juror.

Q. That's not true in federal court. You have to follow the law as I give it to you, and sometimes jurors disagree with the law. What I want to know is: If you disagree with the law as I give it to you, will you follow it or will you substitute what you think the law should be instead?

A. I think I would follow my conscience.

Q. Even if it disagreed with my instructions? There are no right or wrong answers.

A. No. I understand. I understand. You know, clearly as the authority, you know, I respect the Court. And I understand that, you know, you have a much greater authority in terms of knowing the law than I do. But my conscience -- I can't separate myself from my conscience.

Q. Are there any questions?

Q. **[MR. PETROCELLI]** Do you have any reason to believe that you couldn't follow the law in this particular case -- criminal case?

**[126]**

A. **[JUROR 48]** I have no basis.

Q. Do you understand the Judge will give you very clear instructions on the law at the end of the case?

A. I would guess so, yes, sir.

Q. When you get those instructions, are you prepared to follow them as the Court instructs you to do, as you're required to do?

A. I would follow those instructions, yes, sir.

Q. Okay. Do you blame Mr. Skilling or Mr. Lay for people you know losing money?

A. No.

Q. Okay. Thank you, sir.

A. **[MR. RAMSEY]** Nothing, Your Honor.

Q. **[MR. STRICKLIN]** Sir, you said in response to Mr. Petrocelli that you were prepared to follow them as you sit here today. But you're going to be required to take an oath if you're chosen for this jury, and that oath says you will follow the law. Regardless of your conscience, you have to follow the law. That's the oath that you are going to be given and you'll have to take to be on this jury.

Can you take that oath and then -- with the possibility that you may have a conscientious objection to a particular law?

**[127]**

A. **[JUROR 48]** I think I'd need -- I think -- I'd have to see -- put myself in that situation. I mean, can I give an example --

Q. **[THE COURT]** Yes.

A. -- of what I'm talking about?

Q. Yes.

A. There was a woman -- or I was told there was a woman here in Houston who ran an after-school kitchen for children -- underprivileged children, hungry kids after school. They had nowhere to go, so she fed them at her home. The health department decided this woman needs to be licensed and provided -- follow the rules. So she complied, and she outfitted her kitchen to the instructions of the health department.

Well, the health department came back in and said, "Well, look, you need to put a vent and a hood over your range to get rid of all the grease."

She says, "Well, I don't fry foods." Nevertheless, she was found guilty and she was fined in that instance. I look at that as a law that, yes, she clearly violated. But in this case, can you in all good conscience send a woman -- or give her a fine or can you send her to pay some sort of penalty because of this sort of inapplicability? I didn't think that was relevant. And in that case, I would have to follow my conscience.

**[128]**

Q. You've heard me describe the charges in this case, wire fraud and securities fraud and various other federal criminal crimes. Do you have any preconceived notions about what the government would have to prove to establish those crimes?

A. I don't, no.

Q Have you ever done any legal research about those crimes?

A. I've not, no.

Q. So you -- can you probably assume between the two of us that I may know more about those areas of law than you? And I don't mean to be flippant.

A. No, I don't believe you're being flippant. I understand that.

Q. Any other questions?

A. **[MR. STRICKLIN]** No, no questions.

A. **[THE COURT]** Thank you.

A. **[MR. PETROCELLI]**Thank you.

Q. We're going to stop and let the jury go to lunch in just a minute. We've gone through now --

A. Where did we leave off?

Q. 48.

Are there any challenges for -- I've excused 45. Any challenges to 47 or 48?

**[129]**

A. No, Judge.

A. **[MR. RAMSEY]** No.

Q. **[MR. STRICKLIN]** To 48, just hear me out. He can't -- he says that as he sits here today, everything being equal, sure, he could probably -- you know, probably follow the law. But he can't take that oath. And the fact of the matter is, the ultimate question here is when it comes down to it, if he has a conscientious objection, would he follow his conscience?

And the vented hood example he gave was a great example. What he said there was I couldn't follow the law, I would have to follow my conscience and find her not guilty. And a person like that can't take an oath in a case like this.

A. **[THE COURT]** I think in this case he pretty well indicated in response to Mr. Petrocelli and my last question that in this case he could. So your objection is overruled. All right. We're down through Number 48.

Ladies and gentlemen, may I have your attention, please. Most of you who have been here since 7:00 a.m., so we know you want to have lunch. We have provided lunch at no expense to you on the sixth floor. Now, I don't want the lawyers and media going in there and getting this sumptuous repast that we have spread for you. So unless you have a juror ticket, you're not

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entitled to the free lunch buffet.

But those of you who do have a juror badge, if you will go to the jury section, they have lunch waiting for you. We will pick up again at 1:00 o'clock, and I would like to have in the courtroom then jurors with Badge Numbers 49 through 87. And we will pick up with you.

Again, let me tell you something. We have two elevators reserved for you, but there's a whole phalanx of people interested in this case -- lawyers, the media people. Don't approach anyone or allow anyone to approach you that is not a Court personnel or doesn't have a juror badge on because we don't want to have any question about any improper discussion.

So Ms. Carr will -- and the CSOs will take you to the jury elevator, take you down to the sixth floor and then they will bring you up here. So if you will just follow the instructions of these wonderful people who are assigned to help you today, we'll be sure that you don't come into contact with anybody else. And I'll see you back here at 1:00 o'clock, those who I just mentioned.

Q. **[MR. PETROCELLI]** The ones I have gone are -- well, 24 didn't show, so she's out. And then I had 43 and --

A. 45.

Q. 45.

**[131]**

A. And there's a couple of other no-shows. 226 didn't show up.

Q. 226.

A. 221 didn't show up. She has a sick child.

Q. She's out, right?

A. Yes. And 239 didn't show up. I doubt we'll get to them, but I just wanted to let you know.

Q. 239.

A. Give Ms. Carr your selection of who you think this guy wants to get on the jury is. Do you know who it is? Who do you think it is?

Q. Do you have Questionnaire Number -- I mean the name of 113 or 117? Is there a guy named Medrano in that range?

A. I'm using the previous numbers.

Q. **[MR. STRICKLIN]** 112 is Mark Rodriguez.

A. **[MR. PETROCELLI]** Yeah. It might be that person.

Q. **[THE COURT]** Do you think that's who it is?

A. **[MR. PETROCELLI]** Well, that person. And there's another one, Medrano. It's one of the two, I think.

I need one other housekeeping. The rule, in my understanding, is not invoked for witnesses for

**[132]**

opening statement. It is under 615. It's just the testimony, right?

A. Right.

Q. Okay. Mr. Skilling's wife, Rebecca Carter, is a witness in our case, perhaps. She's on our witness list. Is the government going to object to her attending even the testimony to -- testimony phases of the trial?

A. **[MR. STRICKLIN]** I'm sure we will, Your Honor.

Q. **[THE COURT]** Let's take that up later.

A. **[MR. PETROCELLI]** Fair enough. But she can come tomorrow?

Q. She can come tomorrow.

Who else besides 112 do you think might be the suspect?

A. **[MR. RAMSEY]** I'll hold my comments, Your Honor.

Q. **[THE COURT]** Let Ms. Carr know at 10 minutes to 1:00. We'll stand in recess until 1:00 o'clock.

(The following was had before the jury panel.)

Good afternoon. Please be seated. I hope the lunch was good. We were up all night. I hope they were satisfactory.

I think the next juror we need to talk to individually is Juror Number 49. Would you please come forward.

**[133]**

(The following was had at the bench)

How do you do?

A. **[JUROR 49]** Fine.

Q. Thank you for your patience. Just a couple of questions based on your questionnaire.

You indicated that you didn't watch any of these particular TV programs or newspapers.

How do you get your news?

A. If I see it on TV, but I really don't watch much of it. Too busy, you know, as far as after work, I work around the house. I never have time.

Q. Do you recall in the last week or so watching anything on television about the case?

A. Yeah. They just mentioned the trial was starting today or something, but I don't -- I don't pay too much attention to it.

Q. Did you pick up any particular impressions about the defendants or anything about the merits of the case?

A. Just that, I guess, they were lying about what was going on with the company. I mean, as far as that goes. I don't know.

Q. Is that what the newspaper said?

A. Yeah. I mean, I don't -- I never really paid attention to it.

**[134]**

Q. Did you -- do you believe what you heard in the newspapers and radio and television?

A. I think it's a possibility, they might have mentioned it. I don't know. I mean, that's --

Q. Do you think these defendants are guilty of something?

A. I don't know. That's why I'm here, I guess.

Q. That's what we're trying to find out.

A. I think the majority of people out there think so, you know, from what the media puts out.

Q. Well, the media is not going to decide this case. And we've excused a lot of people already. We're trying to pick people who will start this case with a clean slate and will conscientiously follow my instruction that the defendants are presumed to be innocent.

A. Right.

Q. That's why we're asking about media exposure. We're looking for people who may have heard or watched something but don't necessarily remember or paid much attention to it.

A. Right.

Q. And I'd kind of like to know how

**[135]**

you feel.

A. I really wasn't paying attention to most of it. I don't know.

(Portion sealed by order of the Court)

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Q. **[THE COURT]** Yes.
A. **[JUROR 49]** They should be able to until proven guilty.
Q. Well, I know. But is there anything about it which you've heard or read that would cause you any difficulty in assuming that they are innocent?
A. No. No.
Q. **[MR. PETROCELLI]** I just have one question, Judge.

Thank you very much. Based on what you read in the media when you said you thought a majority of people thought the defendants did something wrong, would you have trouble -- if the evidence showed that they should be acquitted, would you have trouble acquitting them and then going back to your work and family knowing that you

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acquitted these people?
A. **[JUROR 49]** No. No.
A. Okay.
A. **[MR. STRICKLIN]** No further questions, Your Honor. Thank you.
Q. **[THE COURT]** Thank you very much.
A. **[JUROR 49]** All right. Thank you.
Q. Counsel. And the transcript is going to be available to everybody, except on very rare situations like that where I think it invades the privacy.
A. **[MR. PETROCELLI]** Sure.
Q. **[THE COURT]** Juror Number 50. 50, ma'am, that's you, I believe.

How do you do?
A. **[JUROR 50]** Good morning.

Q. Good morning, and thank you for your patience. I know as a third grade teacher, you have to be patient. I remember when my boys were in the third grade. Anybody could put up with them eight hours a day, they'd have to be patient.

A. Well, I love it.

Q. You say that you read "The Chronicle" and watch --

A. Yes.

Q. -- Channel 13 and Channel 11?

**[139]**

A. Yes.

Q. Do you read "The Chronicle" every day?

A. I read bits and pieces of it. Not cover to cover.

Q. Do you pull out the business section or the city and state section, read through it every day?

A. I glance through it.

Q. Do you?

A. The headlines, you know, the front articles.

Q. There have been a lot of headlines in the last week about this --

A. Yes.

Q. -- case.

A. Yes.

Q. Have you read any of those articles?

A. I read the one about Ken Lay where it was talking about him being a -- awaiting the trial and was a father and grandfather.

Q. What impression did you form of Mr. Lay from that article?

A. Not really. I was just thinking -- I'm

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a grandparent, and I was just thinking about the overwhelming feeling that he must have right now as a father, grandfather and that role model that he has.

Q. Do you recall any of the other articles that you've read about the defendants or about this case?

A. To be honest, I didn't -- I don't know anyone personally that worked at Enron. I would hear it on the news and just let it filter in and out. And so, no, I've not formed, you know, a definite opinion.

Q. Do you remember anything that you may have seen on television about the case or about the defendants?

A. I remember seeing them, you know, but there was one gentleman that subbed at our building -- I thought about it later, after I filled that out. He subbed there four or five times, and he was an ex-Enron employee. And I remember at lunch one day asking him something about it. And he said, "Well, I liked working there."

And I said, "Why?"

And he said, "Well, that's the best place I ever worked."

And I thought about that later after I mailed that in. And, I mean, I just saw him four or five times, and that's it.

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Q. Did he ever say anything about Mr. Lay --

A. No.

Q. -- or Mr. Skilling?

A. Never. Never.

He was looking for another job.

Q. Is there anything about your experience that you think would prevent you from assuming the defendants are innocent as they start this trial?

A. No. I think I'm pretty good -- of course, it's a much lesser severity in dealing with guilt and innocence in the classroom of minor things -- but

I'm very concerned about my students without me there.

Q. Would there be a substitute who could be --

A. Well, there's always substitutes. There's a, you know, young man in there today. It's just that I'm the teacher.

Q. I understand that. And that's --

A. You know, my mind has been with them today because I love my job.

Q. **[MR. PETROCELLI]** Do you know anything or have any views about Mr. Skilling, ma'am, that you didn't share with us?

A. **[JUROR 50]** No. No, I did not.

**[142]**

A. Okay. Thank you.

A. **[THE COURT]** Just --

Q. **[MR. STRICKLIN]** You're a teacher at Pasadena?

A. **[JUROR 50]** Yes.

Q. And do you have a particular class? Is it just a third grade class or special needs or anything like that?

A. No. It's third grade. And I teach two sections: Math, social studies and science.

Q. And how long have you been there.

A. Sixteen years.

Q. Do you know Virginia Mitchell?

A. No. Fifteen years.

Q. **[THE COURT]** Thank you very much.
Juror Number 53.
How do you do? Thank you for your patience.

A. **[JUROR 53]** Thank you for lunch.

Q. What did they serve you?

A. I had the vegetarian salad.

Q. You know, I argued with them because I said we were going to have vegetarians. My youngest son is a vegetarian, so I got five vegetarian plates.

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A. I'm not a true vegetarian, but I enjoyed the experience.

Q. The truth.

A. **[MR. PETROCELLI]** The Judge is always right.

Q. **[THE COURT]** No, no, no, I'm not. But they said, "We aren't going to have any."

I said, "Yes, we are."

A. **[JUROR 53]** Thank you. It was very good.

Q. I believe you said that you knew someone?

A. I do.

Q. Who do you know?

A. I know Shari Gibson, and Shari Gibson is a neighbor and good friend of mine. She lives about six streets down from where I live. And I met her three and a half years ago when we moved here to Houston from the Caribbean. We were living in the Caribbean.

Q. Has she talked to you about the case?

A. No. We have not talked about the case, but she did tell me that she did the personal accounts for Mr. Lay. And I think she did them when we first moved three years ago; but then I think she left that job, and then she's back at it again. That's all I know.

Q. Has she discussed Mr. Lay with you?

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A. No, not at all.

Q. She's not told you what she thinks of him or anything?

A. No, she has not.

Q. When you got this questionnaire, did you ask her anything about Mr. Lay or the case?

A. What I did was, I did call her. And I told her that I got a questionnaire and it appeared to be that it was going to be related to the Enron case. And I was going to have to put down on the form that I knew her and that she told me that she was working for him. And she said, "Absolutely. You have to do the right thing."

Q. What did you do at Fulbright & Jaworski?

A. I was a paralegal for Mr. William Parse in oil and gas litigation.

Q. How long ago was that?

A. That would have been in late '70s, early '80s.

Q. Did I know you there?

A. Tell me your name again.

Q. Sim Lake. I used to work with Bill Parse. I was on the same floor.

A. I bet we know each other. I worked --

Q. I obviously made a strong

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impression on you.

A. **[MR. PETROCELLI]** He might have been your boss.

A. **[THE COURT]** No. No.

A. **[JUROR 53]** Well, you don't look familiar.

Q. Well, I've aged substantially since then.

A. I'm sorry.

Q. That's all right.

A. I do know, however, Mr. Parse passed away in the past year.

Q. Yeah. Quite awhile ago.

A. I worked a lot with him on his Oklahoma cases.

Q. I didn't work on that one. But anyway, let's get back to this.

A. Sure. Absolutely.

Q. You said that you have friends or family members who applied to work for Enron. And when I asked who, yourself?

A. Yes.

Q. You were a contract employee in the '80s and you left when your contract was over.

Can you tell us a little bit about what you did as a contract employee?

A. I worked in the oil and gas, the

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law department. I worked there and worked on some of their oil and gas cases, and most of it was land-related. If you're familiar with the position of a landman, I did title research.

Q. Okay. Did you come into contact with any of the defendants in this case or any of the people who we mentioned in the media about the case?

A. No, not at all.

Q. And did you leave Enron with good feelings about the company?

A. I was a contract employee, and I was paid on a contract basis and I left knowing that it was time for -- my contract ended, and I just left on those terms. So, yes, good feeling.

Q. Okay. In response to the question: "Have you heard or read anything about Enron cases?" you said, "No."

Have you not read any of the newspaper articles about the case?

A. You know, I'm a very busy housewife. I'm a PTA president for Spring Forest Middle School. So I'm very busy in my children's lives, and I don't watch TV very much. My favorite channel is Lifetime, being a channel for women, when I have time to actually sit down. I don't keep up with the news.

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We lived in the Caribbean before we moved here, and evidently this was going on when we were there. And when I came back, I heard little bits and pieces of people talking about it, but I never turned on the news enough to know enough about it at all.

Q. In the last week, there has been a barrage of publicity in "The Chronicle" and television.
Do you take "The Chronicle"?

A. We don't -- we do not subscribe to "The Chronicle." I honestly have to tell you how ignorant I am about things. I don't watch it, and I don't read the news. We don't take the paper. Sorry.

Q. I don't believe I have any other questions.

A. **[MR. PETROCELLI]** No, Your Honor.

Q. **[MR. STRICKLIN]** I have just one area.
In this case, there are some accusations of financial fraud. You know, you're good friends with Mr. Lay's accountant?

A. **[JUROR 53]** Shari.

Q. Would that lead you to believe, when we stand here without hearing any evidence at all, that he analyzed his financial matters with ethics and principles.

A. Do I believe that he would handle his

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financial --

Q. Right. Would you already have a preconceived notion that he must be doing it right because he's hired my friend who I know to be a good person?

A. **[MR. PETROCELLI]** I object to leading, Your Honor.

Q. **[THE COURT]** That's all right.

A. **[JUROR 53]** You know what: Like I said, Shari and I have discussed nothing about that. I believe everybody's personal financial matters are their own until, I guess, you're put in a situation like this where you have to make a decision on that. I mean, no.

Q. If you went home -- if the government proved beyond a reasonable doubt that Mr. Lay was guilty of something and you believed that the government had met its burden, would you have any reluctance telling your friend that you had found Mr. Lay guilty?

A. Absolutely not.

Q. And if the government failed to prove its burden, would you have any problem telling her that Mr. Lay is not guilty?

A. Absolutely not.

Q. Okay. Thank you.

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Q. **[MR. STRICKLIN]** Just one brief question.

Could you agree not to talk with your friend at all about this case during the course of the entire case?

A. **[JUROR 53]** Absolutely. You have my word of honor and to this point --

Q. That's all we need.

A. -- we simply have not talked about it.

Q. **[THE COURT]** Thank you.

A. **[JUROR 53]** Yes, sir.

Q. Juror Number 55.

You don't want to strike her. She's a good juror.

A. **[MR. STRICKLIN]** She used to work for your firm.

Q. **[THE COURT]** No, she didn't remember me, which is good. I came in late and left early.

Juror Number 55. Thank you for your patience. We just have a few follow-up questions here. Let me see here.

A. **[JUROR 55]** Not entirely.

Q. I'm sorry. I didn't hear it.

A. **[MR. STRICKLIN]** Nothing is highlighted.

Q. **[THE COURT]** When asked, "What did you think about the government's investigation of the collapse of Enron?" you said that "I am not one to get up in possible

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false publicity."

And then asked if you'd heard or read about Enron. And you said, "Friends have mentioned the Enron conspiracy by name, but no real convictions. I had heard about Enron in the news, though, I haven't much paid attention."

Do you read the newspaper every day?

A. **[JUROR 55]** I do.

Q. Which paper?

A. I read "The Chronicle" off and on. I don't subscribe to it, but I do read it.

Q. And do you read -- when you do read, it do you read the entire paper or just parts of it?

A. Just certain sections, certain things that catch my eye, you know. I guess. I don't know. I guess it's not one of those things I would -- just not interested in the case, but if it's not drama. I guess because of my hard feelings of the corporate world a couple of years ago, that it just kind of put me down.

Q. What is your feeling about the corporate world?

A. Well, I mean, I've always worked for cooperate; but when I first moved down here, the company I worked for, a very large company, they filed bankruptcy and told us all we had secure jobs. And then on a Thursday

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morning at 10:30, they told us to pack our stuff and leave by 11:00. So it just made me leary of people in corporate because -- it's one of those things about what I've heard about Enron, I guess, it's one of those things that makes me wonder. You know, I don't want to get tied into it, knowing how my feelings about what it is.

Q. Well, do you think that because Enron collapsed, you think senior executives must be criminally responsible?

A. I'm not saying that, and that's why I haven't judged opinion. But what's in the publicity. That's what I hear most of the time. That's what -- I know that. You know, in our case, they've had people that knew what was going on. I can't -- I don't prejudge. I know I don't know what's gone on with these two, but I don't know my --

Q. What do you recall in particular reading about Mr. Lay or Mr. Skilling?

A. Nothing really, other than the fact until recently that things were happening. And then all of a sudden, it was all good, and then all of a sudden it ended in bankruptcy and everything just seemed like it was too quick, I guess, just kind of what I understood. I don't know. Like I said, I don't know the whole story. I haven't really --

**[152]**

Q. Well, that's what I'm trying to find out. Nobody can -- very few people in this country could have been oblivious to Enron in this case. But we want people who will base their decisions on only the evidence. And I'm concerned that these previous views you may have heard in the media might already have you sort of leaning against the defendants, and especially in light of your prior experience.

A. Yeah.

Q. Do you feel that way?

A. Not fully, but somewhat. Only -- I mean, it's not like -- yeah. Like I said, I don't want to prejudge, but because I'm -- the personal experiences that occurred, a little bit, yeah.

Q. Do you think that the defense has some burden to show that they're not guilty?

A. I know we're not supposed to think that way in the judicial system; but to a certain degree, yeah. It's not like -- like I said, I know I'm not supposed to.

Q. No. There's no right or wrong answers. We want people --

A. I'm being -- morally as a Christian and everything, we're not supposed to be prejudge. But because of my own experience with my own corporation, or the one I worked for, I lean towards prejudging them. I guess it

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just happens, I guess.

Q. Do you have any questions?

A. **[MR. STRICKLIN]** No, Your Honor.

Q. **[THE COURT]** Thank you, ma'am.
Is there going to be a challenge?

A. **[MR. PETROCELLI]** Yes, based her on her close personal experience which closely parallels what happened here, Judge.

Q. Motion is granted.

A. **[CASE MANAGER]** Which juror was that?

Q. **[THE COURT]** 55.
And Juror 57. Thank you.

How do you do. Thank you for your patience. We just have a few questions based upon your questionnaires.

You said that, in response to one question, "My neighbor and friend, Sheila Kahanek, a defendant in the Enron Nigerian barge trial."

Did she talk to you about that case?

A. **[JUROR 57]** Yes.

Q. And what do you remember she telling you about it?

A. Just her experience throughout the trial, what she was feeling and what questions were asked of her.

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Actually, I attended the closing statements at that trial as well.

Q. Do you understand that there may be issues related to that case --

A. Yes.

Q. -- in this case?

A. Yes.

Q. Have you formed any ideas about what happened in that incident?

A. No.

Q' Do you think Ms. Kahanek was treated fairly by the --

A. Yes.

Q. You do?

A. Yes.

Q. Do you think that the prosecution is guilty of some wrongdoing because she was indicted in that case?

A. No.

Q. What do you remember -- did you attend any days of evidence during that trial?

A. No.

Q. Just the final arguments?

A. Yes.

Q. And why did you attend that day?

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A. Because she's a friend and moral support.

Q. What is she doing now?

A. She is a financial consultant for companies that are Sarbane-Oxley-compliant.

Q. You also indicated that -- we talked about that.

You said that some family members or friends may have owned stock in Enron. And in response to how many shares and whether they lost money or anything, you said you did not know.

Were these people other than Ms. Kahanek?

A. Yes.

Q. And can you tell us who they were?

A. My mom and dad owned some small amount of stock, is my understanding; but I honestly have not discussed it with them. I don't know how much it was.

Q. Do you know if it's significantly affected their lifestyle?

A. Not at all. It did not.

Q. And how about Ms. Kahanek? You said she lost money in her 401(k). Did she talk to you about that?

A. No. I just know she made a comment. And since I had worked for World Com, it came up. So she

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said that we had both -- you know, that had been something we both experienced.

Q. You indicated that you read "The Chronicle," "Newsweek," "Time," watch local television.

Have you kept up with the media's discussion of this case?

A. Not much. A little bit. I've read a few of the articles, but not much.

Q. Did you read the big spread in the Sunday "Chronicle"?

A. No. I purposely did not.

Q. Okay. What do you recall -- what's your most vivid impression based on what you've read about this case?

A. Most vivid impression. Just, you know, I think I -- initially when it happened, just the initial shock, you know, throughout the community. Having, like I said, worked for World Com, they all happened about the same time. So the initial shock that a company that appeared to be doing well, not end up doing as well as, you know, was discussed, you know, people previously had thought.

Q. You lost money with World Com?

A. Correct, my 401(k).

Q. Do you feel that you are somewhat

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sympathetic to the people at Enron who lost their 401(k) because of it?

A. I would be sympathetic to someone who had lost money 401(k), certainly.

Q. Do you feel the need to vindicate that loss?

A. Absolutely. It happened. I mean....

Q. And you understand why I'm asking you these questions?

A. Sure.

Q. Nobody expects that you do. But we want to make sure that the people who try this case can put aside any preconceived experiences or ideas.

A. Sure.

Q. Do you recall listening to any particular programs on radio or television about the case?

A. No.

Q. Do you have any questions?

Q. **[MR. PETROCELLI]** I just have one question. Given your experiences at World Com, are you able to separate that out from whatever goes on in this case?

A. **[JUROR 57]** Certainly. They don't have anything to do with each other. And being an employee of the company that was involved with corporate fraud, it didn't have

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anything to do with me, per se. I went in. I did my job. I did a good job. That's what I tried to focus on.

A. Thank you.

Q. **[MR. STRICKLIN]** Ma'am, you said you saw the closing argument in Sheila Kahanek's case.

A. **[JUROR 57]** Sure.

Q. Also known as the Nigerian barge case. Part of what occurred in that case, there may be evidence of that in this case.

Would that affect the way you view this case at all?

A. Not at all.

Q. You're able to set aside everything you've heard that day and not.

A. Honestly, I don't remember a lot of what I heard other than her attorneys' closing arguments. I was there mainly to support her.

Q. **[THE COURT]** Do you remember her attorney's name?

A. **[JUROR 57]** Dan Cogdell.

Q. What did you think about his argument?

A. It was a very interesting.

A. Okay.

Q. **[MR. STRICKLIN]** And she was accused of criminal

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wrongdoing; correct?

A. **[JUROR 57]** Right.

Q. And as it turned out, the jury found her not guilty?

A. Correct.

Q. And would it impact you to be able to sit in this trial to be fair to both sides and, I guess --

A. Certainty.

Q. Let me finish this.

If a prosecutor who actually cross-examined her, who gave a closing argument, is going to be a prosecutor in this case --

A. Would that be a problem?

Q. Yes.

A. No. I don't even know if I would recognize them, to be honest with you.

Q. But the issue, I guess, I'm getting at is: Someone who has and he accused her of being flat-out a liar and guilty of criminal offense --

A. Sure.

Q. -- you could treat someone who is making accusations in this case fairly in that regard?

A. Yes, I can.

A. Okay.

**[160]**

Q. **[THE COURT]** Thank you ma'am.

A. **[JUROR 57]** I saw the process work for her. Do you know what I mean? She was vindicated. She went through a trial, and she was found innocent. So the process can work, and I understand that.

Q. Thank you very much.

All right. I've already excused for cause 55.

Are there any challenges for cause 49, 50, 53 or 57?

A. **[MR. PETROCELLI]** No, Judge.

A. **[MR. STRICKLIN]** Judge, on 57, the United States makes a challenge for cause based on the fact -- this is a very unusual situation. We have someone who actually witnessed the closing argument, and bias or prejudice -- it's her own testimony -- it was only the defense's closing argument in a case that impacts this case. There will be evidence and testimony about the Nigerian barge transaction in this case. And she's already heard the arguments of Dan Cogdell in that case.

That is -- it's improper to have a juror in this situation to be qualified to be a juror in this situation?

Q. **[THE COURT]** Any problems?

A. **[MR. PETROCELLI]** There's nothing in the answer

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that would indicate that she had any recollection of any of the issues. She couldn't identify the attorneys, and she was quite clear that she could be fair.

Q. I was impressed by her candor. I believe her, and I believe she can be fair. The motion is denied.

All right. Juror Number 61.

Would the next 12 please assemble in the more comfortable seats in the jury box. And we'll ask, please, 61 to come forward, first.

A. We're making some progress with this list.

A. Yes.

Q. When we get pretty close to our strike panel --

A. I'm going to let you know. I'm keeping track.

Q. You're keeping track.

A. I'm trying.

Come around here. These lawyers just won't make room.

A. We're just scrambling to hear. That's all.

Q. Thank you for your patience. We just --

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A. Here, Mike. Do you want to get in here?

Q. We just have a couple of questions. But you obviously have some smart children because one of your sons works for Judge Crone?

A. **[JUROR 61]** Uh-huh.

Q. **[THE COURT]** He must have done very well in law school?

A. He did. Takes it from his mother. No, that's not true.

Q. Does he talk about his job as a law clerk?

A. You mean about specific cases?

Q. Yes.

A. No.

Q. Has he mentioned to you at all -- of course, Marsha is in Beaumont, but has he talked to you at all about any of the Enron cases?

A. No.

Q. You have a friend, Dave Howard, who works for Arthur Andersen.

Did he do work on the Enron account there?

A. I don't know. I haven't talked to him in years.

Q. Okay. In response to the question,

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"Have you heard or read anything about the Enron case?" you said, "no."

Do you not normally read a newspaper?

A. No, I didn't. I didn't keep up with it. I mean, I knew it was going on, but I didn't keep up with the particulars.

Q. Have you read -- in the last week, there have been a lot of articles about the case. "The Chronicle" had a big story Sunday.

Did you read Sunday's "Chronicle"? You need to answer "yes" or "no."

A. No.

Q. Thank you. Why not?

A. Why not? I just don't normally read the newspaper. I read other things.

Q. How do you get your source of news?

A. I have XM radio, and I listen to CNN and Fox when I'm in the car.

Q. Have you -- do you recall any articles, any stories, on CNN or Fox about this case?

A. Just in the last couple of days. That's all they've been talking about.

Q. And what do you recall?

A. Just that the trial was coming up, that you were going to be the Judge, and that you were a

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no-nonsense Judge. And then they said some uncomplimentary things about Mr. Lay.

Q. Did you believe those things?

A. No.

Q. Do you know anything about Mr. Lay or Mr. Skilling?

A. Just that they were involved in Enron and they're the ones that are here today.

Q. The press has had various things to say about people in this case, some complimentary, some uncomplimentary.

Have you formed any impressions that you would carry into the jury box if you were selected about Mr. Lay or Mr. Skilling?

A. No.

Q. Pardon me?

A. No, sir.

Q. You had -- in response to Question 70 about Mr. Lay, I said, "Do you have an opinion about him?"

And your answer was, "Shame on him."

What did you mean by that?

A. I think that Enron was a company that everybody admired and looked up to. Enviable jobs, had a great reputation. They were kind of the standard. And

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then it all just kind of fell apart.

And whether he's innocent or guilty, he was at the helm. He should have known what was going on at the company.

Q. That may be an issue in this case, in fact, maybe a key issue as to whether things that allegedly happened at lower levels of the company were known by him or were told to him or he should have otherwise known.

Are you starting this trial with the belief that, regardless of what the evidence may be, because he was the CEO and was paid well, he had a responsibility to know what was happening?

A. Probably, yes.

Q. Do you think he's criminally responsible because he had that responsibility?

A. I don't know. I don't know how to answer that.

Q. Let me try to parse the question in two ways: The CEO of a company is like perhaps the commander of a unit in battle. He's responsible for everything that happens.

A. Uh-huh.

Q. The Judge is responsible for things that happen in the trial. That's a principle that most

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people would adhere to.

This case doesn't deal with general principles of corporate governance. This case is going to deal with particular transactions were known by Mr. Lay or were known by Mr. Skilling.

And with -- notwithstanding your general views about corporate governance, can you presume, as you start this trial, that Mr. Lay is innocent?

A. I hope so; but you know, I don't know. I can't honestly answer that one way or the other.

Q. Do you think he has sort of an obligation to prove his innocence?

A. No. That's -- not if I understand. He's assumed innocent.

Q. And can you conscientiously carry out that assumption?

A. I could honestly say I will give it my best.

Q. **[MR. RAMSEY]** Ma'am, this is not, of course, a test. We're just trying to find out how you really feel.

One of the questions the Judge didn't ask you about is Number 67, Your Honor. It was "based out of greed, hurt a lot of innocent people."

And then, when you answered the Judge's questions about your feelings about Mr. Lay, would it be

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fair to say that you start off leaning a little bit? Do you think Mr. Lay at least probably did something wrong?

A. **[JUROR 61]** I don't know if he did something wrong specifically. I think he was responsible for knowing what was going on in his company.

Q. And so that might -- might that cloud your judgment relative to criminal responsibility?

A. I don't mean to be avoiding that, but, you know, I bring in my past history. I bring in my biases. I would like to think I could rise above those, but I've never been in this situation before. So I don't know how I could honestly answer that question one way or the other.

Q. It's a hard question to ask or answer. Nobody is trying to press you one way or the other; but if you have a concern about it, please express it to us.

A. Well, you know, obviously, I do have some concerns.

Q. **[THE COURT]** Mr. Stricklin?

Q. **[MR. STRICKLIN]** Could you wait, ma'am, until you hear all the evidence and then base your evidence based on what occurs in this court and not, you know, the bias that you bring -- any biases that may or may not bring from the outside?

**[168]**

A. **[JUROR 61]** Well, unfortunately, a lot of that is going to depend on you guys, because, honestly, I don't have enough information or knowledge about securities and the law and accounting. So if y'all present it to me in a real technical manner that I don't understand, then I don't know. I don't know how to answer that.

Q. **[THE COURT]** Let me just put it this way: The government has the burden of proof.

A. Uh-huh.

Q. If you have a reasonable doubt that the defendants are guilty, can you acquit them?

A. If I have a reasonable doubt that they're guilty?

Q. That they're innocent. I'm sorry.

A. Yes.

Q. You can acquit them?

A. Yes.

Q. **[MR. PETROCELLI]** I just have one question, Your Honor.

Do you have any views or feelings, ma'am, about Mr. Skilling? And we do appreciate your candor.

A. **[JUROR 61]** No.

Q. You sort of put him in the same boat as Mr. Lay?

A. Yeah, probably.

**[169]**

A. Okay. Thank you.

Q. **[THE COURT]** Thank you, ma'am.

Any challenges?

A. **[MR. RAMSEY]** Yes, Your Honor. I think we're entitled to a clear and unequivocal answer, and I just don't think the lady can truthfully give it.

Q. You know, she tried.

A. She tried.

Q. **[MR. STRICKLIN]** Again, Your Honor, we have to take them at the word, and that's the way we've been doing it. And she said she could.

A. **[THE COURT]** The motion is denied.

Q. **[MR. RAMSEY]** We ask respectfully for another peremptory.

A. That request is denied.

Juror Number 64 -- excuse me. 63. I'm losing my count here. 63. Yes, please. I'm sorry.

A. **[JUROR 63]** I think I'm next.

Q. **[THE COURT]** What did I do with my questionnaire? Here it is.

You're a graduate of Second Baptist School?

A. Yes, sir.

Q. Okay. We just have a few questions for you here.

**[170]**

You indicated in the questionnaire that you had not read anything about the Enron cases or heard anything in the media.

Is that still the truth, the case?

A. I may have heard a little bit leading up, but not -- I don't really -- I read more like the world news, and I don't really pay attention -- and I didn't live here when everything happened. I was in Austin going to school.

Q. When did you return to Houston?

A. July -- not this last July, the July before.

Q. Do you subscribe to "The Houston Chronicle"?

A. No.

Q. Do you subscrive to any newspapers?

A. **[MR. BERKOWITZ]** No.

Q. **[THE COURT]** What television stations do you normally watch?

A. **[JUROR 63]** Like the major networks, but I don't really watch the news at all. I'm a turtle person.

Q. No. We're not being critical. We're just trying to find out.

Do you recall anything that you may have seen or heard on television about this case?

**[171]**

A. No.

Q. You --

A. I know they made a movie, and then there was some book.

Q. Did you see the movie?

A. No.

Q. Did you read either book?

A. No. There were two books. No, I didn't read either book.

Q. You indicated in response to questions about Mr. Lay and Mr. Skilling that Mr. Lay is a member of your country club?

A. My parents are members.

Q. Parents' country club.

A. But I couldn't pick him out of a lineup.

Q. Do you ever frequent that club with your parents?

A. Uh-huh.

Q. Have you seen Mr. Lay there?

A. I don't think so. If I did, I didn't know.

Q. Are your parents friends of his?

A. No.

Q. Have they ever mentioned anything

**[172]**

about him to you?

A. No.

Q. Would you feel at all uncomfortable sitting in judgment on him because your parents are members of the same club?

A. No.

Q. In response to Question 71, you said -- which asked, "Do you have any opinion about the guilt or innocence?" you say, "I think they probably knew they were breaking the law."

A. I don't know. The only thing I can say is that I -- anything I've ever heard, even like peripherally, has not been -- you know, but that's what people say. And, I mean, it's hard to know. People don't know what they're talking about.

Q. Well, I'm just trying to find out what you think.

A. I don't really have an opinion either way.

Q. This says that "Do you have an opinion?"

And you said, "I think they were breaking the law."

Have you changed that view since you completed the questionnaire?

**[173]**

A. I don't know. I don't -- probably when I wrote it, I maybe thought -- but at the same time, at that point my knowledge isn't any different than it was then.

Q. Well, you understand these gentlemen are facing very serious charges?

A. Absolutely.

Q. And the jury is going to have a significant role in their future. And you have to presume that they are to be innocent --

A. Oh, absolutely.

Q. -- to be a fair juror.

A. And I do. I mean, I really don't feel either way about them. I don't know what I was thinking at the time or --

Q. Are you going to begin this trial with a view that Mr. Lay or Mr. Skilling have some obligation to disprove the charges against them?

A. They have to prove it.

Q. Who is the "they"?

A. Prosecution.

Q. Questions?

Q. **[MR. PETROCELLI]** Just following up, Your Honor.

The Judge said it perfectly, ma'am. I just want to make sure what you wrote.

**[174]**

Can we have your word --

A. **[JUROR 63]** Oh, absolutely.

Q. -- that you do not --

A. I really --

Q. -- you will not presume Mr. Skilling or Mr. Lay broke any laws?

A. I don't presume anything. I don't know anything about it.

Q. Would you give us your word on it?
A. Absolutely.
A. Thank you.
Q. **[MR. STRICKLIN]** One of the witnesses in the case, I think you heard, was going to be Dr. Young?
A. **[JUROR 63]** Uh-huh.
Q. Your pastor of a long time. He's been a pastor at Second Baptist for as long probably as long as you've been alive; right?
A. Probably.
Q. Do you know his children?
A. No.
Q. Would you -- if he testifies in this case on behalf of Dr. Lay, would you tend to believe more what he had to say because you know Dr. Young to be a good person?

**[175]**

A. I would believe what he said like I would believe anybody up there.
Q. You could judge his credibility?
A. Right.
Q. You wouldn't start him out at a higher level?
A. No.
Q. [**THE COURT]** Thank you very much.
A. **[JUROR 63]** Thank you.
Q. Juror Number 64, would you please come forward.
Now, you've had a lot of experience with this process, haven't you?
A. **[JUROR 64]** Yes, sir.
Q. **[THE COURT]** Are we doing okay?
A. Yes, sir.
Q. Court acting sufficiently prompt?
A. Yes, sir.
Q. Okay. Any suggestions how we can improve what we're doing based on your experience?

A. I wish our noise was low like that. Ours is loud.

Q. Do you know Mr. Ramsey?

A. Yes, I do.

**[176]**

Q. How long have you known him?

A. He comes in and out of our courtroom from time to time.

Q. Okay. Is there anything about your knowledge of Mr. Ramsey that would prevent you from being fair and impartial in this case?

A. Absolutely not.

Q. Okay. You indicate that you have friends who work for the police department who are constables or sheriff's deputies. There may be FBI agents, there may be other people in federal law enforcement who will testify.

Would you have any trouble judging their credibility just like you would any other witness?

A. No.

Q. Do you presume that a law enforcement officer must be always telling the truth?

A. No.

Q. You indicate that you have two friends who worked or applied for work with Enron.

Do you know if they were employed there?

A. At the time?

Q. At any time. Did they ever work for Enron?

A. Yes.

**[177]**

Q. Do you know when they left Enron?

A. I don't know.

Q. Are these --

A. And I have found out since the questionnaire that I have two cousins that worked there.

Q. Do you know when they worked there?

A. No.

Q. Do you know when they left?

A. No. I rarely talk to them.

Q. You understand why we're asking you?

A. Right.

Q. Are the two friends or two cousins particularly close to you?

A. No.

Q. When is the last time you saw any of them?

A. These two, probably a year, year and a half ago. And my cousins, a couple years.

Q. You indicate that you know people who lost money because of Enron's collapse.

Who are those people?

A. The two that are on there.

Q. Do you know how much they lost?

A. No, I don't. I've never discussed it

**[178]**

with them.

Q. All right. You indicated in response to a question about what you've heard or read -- you said that you read about or heard news when the company collapsed when that happened.

Have you been keeping up with the Enron material -- matter since then?

A. Not really.

Q. Do you subscribe to "The Chronicle"?

A. No.

Q. What newspapers, if any, do you normally read?

A. None, really. I just watch the news.

Q. Which news programs do you watch?

A. I flip channels all the time. 13, 26, Channel 11.

Q. Do you recall any particular stories about Enron that you have watched or heard?

A. No.

Q. Do you have any questions?

Q. **[MR. PETROCELLI]** Do you know anything about Mr. Skilling?

A. **[JUROR 64]** No.

Q. And one final question. Can

**[179]**

you give a lawyer from California a fair shot?

A. Sure.

Q. **[THE COURT]** He's living here full-time. We're going to move him here.

A. **[MR. PETROCELLI]**Thanks.

Q. **[MR. STRICKLIN]** How about Chip Lewis? Do you know him?

A. **[JUROR 64]** Yes.

Q. Does he bring you cookies at Christmas?

A. No.

Q. You said you work in the District Clerk's Office. Do you work for a judge?

A. Yes.

Q. Which judge?

A. Sherman Ross.

Q. And how long have you been with Judge Ross?

A. Twenty years.

Q. In that exact room?

A. Yes.

A. Wow. Congratulations. Thank you.

Q. **[THE COURT]** One of the judges that's good to work for.

**[180]**

A. **[JUROR 64]** I love him.

Q. Number 66. Number 66.

A. **[MR. PETROCELLI]** In all seriousness, Judge, my family loves it here. They love it.

Q. **[THE COURT]** Nice weather, isn't it?

A. The whole community is wonderful.

Q. How do you do, sir? Thank you for your patience. We're taking you on as fast as we can.

A. **[JUROR 66]** I understand.

Q. **[THE COURT]** We just have a few questions.

There's a question whether you've heard or read anything about Enron, and you said, "Yes, TV."

What TV shows do you normally watch?

A. Okay. First off, I watch -- if I watch television, probably late at night, and I watch a movie or something. If I saw anything about this, it was by happenstance. I would not stop and listen to a news report on this, about it. Not even when it originally happened.

Q. Did you just not care about it?

A. I just don't care much about it at all.

Q. Why is that?

A. Well, simply because it's just not something that directly concerns me. Now, I get a call to come down here for this and you asked me to pay attention

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to it. Fine. But I don't care about it otherwise. It doesn't affect me directly one way or the other. So it is not a news stopper for me.

Q. All right. Do you regularly subscribe to any newspapers or magazines?

A. No.

Q. I don't believe I have any other questions. Do you, Mr. Ramsey?

A. **[MR. RAMSEY]** I don't have anything.

A. **[MR. PETROCELLI]** No, I don't have any, sir. Thank you.

Q. **[MR. STRICKLIN]** Sir, in your questionnaire, you said -- one question, Question 39, it says: "What do you think of the government's investigation of the collapse of Enron?"

And you used the term "not much."

A. **[JUROR 66]** Well, I'll give you an explanation for it. And I think that was a couple of months ago. And I think most government investigations seem to go on for years to arrive at if there was really something of substance there that shouldn't have been. That happened in the first 60 days, and it turns out to be kind of a big public show. I'll give you an example. And I didn't follow it along, either, just kind of the end result, it was the crap with Martha Turner [sic]. In the end, they

**[182]**

got her for lying. A woman for lying. Jesus. Wasn't that to spend a few million dollars on.

So the answer to the question is "Not much."

Q. So in general, it's negative view of the investigation because it's taken a long time?

A. I don't know anything about this particular investigation. I know one thing, if you tell me that somebody has done something wrong, you ought to be able to point what they've done wrong before you start investigating.

Q. Okay. So before --

A. You have to have some reason to investigate.

Q. We have to -- so would it be fair to say that the government would have to prove they did something wrong before they even began investigating before you think it's a righteous case against the defendants?

A. No. I think you would have to have a bona fide reason for proceeding forward. And if you did, I think you ought to be able to move directly towards that point and not take the shotgun out and see how many quail you hit with one shot.

Q. Do you think that's what has

**[183]**

happened in this case?

A. I don't know what's happening in this case.

Q. **[THE COURT]** I think that's enough. Thank you, sir. Thank you very much.

Juror 67. How do you do, sir? Thank you for your patience.

A. **[JUROR 67]** Good afternoon.

Q. Good afternoon. We have a few questions based upon your jury questionnaire. You said that you regularly watch the local news sources and you read the "Chronicle." Do you read the "Houston "Chronicle" every day?

A. The last three months I haven't because I moved from my house to an apartment.

Q. You haven't read it?

A. No.

Q. There's been a lot of discussions about the case in the last week or so. Have you read the "Chronicle" during the last week?

A. No. But last night on the Internet I read one article about the case.

Q. And what was that article about?

A. Yeah. That was about the jury selection taking place today, stuff like that.

**[184]**

Q. Did you read anything about Mr. Lay or Mr. Skilling?

A. No, nothing.

Q. Do you have any impressions about the guilt of Mr. Lay or Mr. Skilling because of what you may have seen on the Internet about the case?

A. No. I don't form an opinion based on what I -- what I hear on the news.

Q. I don't believe I have any other questions.

A. **[MR. PETROCELLI]** Nothing, Your Honor.

A. **[MR. RAMSEY]** Nothing, Your Honor.

Q. **[MR. STRICKLIN]** Sir, your father is still in Bombay now?

A. **[JUROR 67]** Not my father.

Q. But he had a restaurant in Bombay?

A. Yes, sir.

Q. That's where you're from?

A. Yes, sir.

Q. How long have you been here?

A. 15 years. I came here in 1990.

Q. **[THE COURT]** Thank you very much, sir.

Juror Number 71. Right up here. Will you all make way for her, please. Thank you for your patience.

**[185]**

A. **[JUROR 71]** No problem.

Q. We just have a few questions based upon your jury questionnaire. You indicated that you normally watch Channel 11 news, Channel 13 news or Fox 26. How do you decide which channel to watch?

A. Whatever isn't playing sports.

Q. Is not playing sports?

A. Not playing sports.

Q. **[MR. PETROCELLI]** We couldn't watch TV together.

A. **[JUROR 71]** Okay.

Q. **[THE COURT]** Which do you watch most often?

A. 13.

Q. And do you watch Channel 13 every day at 6:00 or 10:00?

A. When I'm not working.

Q. Do you -- do you recall any particular discussions about this case?

A. Of course.

Q. What do you remember?

A. Problems, downfall, people's jobs going away. What else? Corruption, everything else.

Q. Do you think --

A. Negative aspects.

Q. Pardon me?

A. I said all negative aspects.

**[186]**

Q. And there has been a lot of negative discussion about the case.

A. Of course.

Q. And do you think Mr. Lay and Mr. Skilling are probably guilty based on what you've read?

A. I don't know.

Q. Well, do you understand that they're presumed by law to be innocent?

A. Yes.

Q. And you heard me describe that presumption. Based on what you've read, do you think that they must disprove what you read and heard about them?

A. I think they have a job to do, both as far as -- yeah, I do have some negative feelings as far as all the officials of Enron. But I think in a way it's their job to prove that they weren't responsible as much as everyone makes them out to be.

Q. It's the defendant's job to prove that?

A. Yeah, in a way.

Q. You understand that it's really the government's job?

A. Yeah, it is. But I think it kind of falls on both shoulders eventually -- at least the way I see it.

**[187]**

Q. If I instruct you that the government has the only burden, do you still think that the defendants have to disprove the charges?

A. If the government had a case -- I mean, knew what they were doing and had a closed, shut case, then no, I don't think he would have to. But as far as what all has been going on and everything, we're used to hearing from the media and then from everywhere else.

It just comes out to the point where I feel like so many wrong things have been done by Enron. And it comes to a point where they have to either show that the officials who are responsible takes charge of it or they let them go, but somehow whoever is responsible needs to be proven guilty.

Q. Well, that's what we're trying to find out. Can you require the government to prove them guilty, or do you think they have some obligation to show that they're not guilty?

A. I think it falls more on the government, and then they have to disprove everything -- what the government is saying. Like if the government says that he's guilty, he did this, I think it's the defendant's job to say, "No. You know what? This is how it went down." It's not my call kind of thing.

Q. Do you have any questions?

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A. **[MR. PETROCELLI]** No, Your Honor, because I think --

Q. **[THE COURT]** Do you have any questions?

A. **[MR. STRICKLIN]** No.

A. Thank you. You're excused.

A. **[MR. PETROCELLI]** Cause.

Q. **[THE COURT]** Can you articulate it for the record?

A. Yes. I don't believe she's able to separate out the presumption of innocence and burden of proof that we're constitutionally entitled to.

Q. Mr. Stricklin?

A. **[MR. STRICKLIN]** No objection, Your Honor.

Q. **[THE COURT]** She is excused for cause.

Juror 74. How do you do? Thank you for your patience. We're moving along as quickly as we can.

A. **[JUROR 74]** Okay,

Q. We just have a few questions.

A. Okay.

Q. Based on the questionnaire that you completed -- if I can find them -- you were asked whether you had heard or read anything about the Enron cases. And in response to that, you said no. But then in a later question you were asked what stands out in your mind, what you've heard or read about Enron, and you said, "The rich

**[189]**

get richer. There is never enough money for the higher ups, and they had to steal it." That's pretty strong language. Who were you referring to there?

A. Well, my husband is a news person. He watches -- we both work for an oil and gas company.

Q. **[MR. RAMSEY]** Ask the lady to speak up.

A. **[THE COURT]** She works for Devon, as her husband. Trade places with him.

Q. **[MR. PETROCELLI]** He wanted to trade again. He's comfortable on this side.

A. **[JUROR 74]** You know, him and I talked about it. And what I hear from work, basically, you know, is all -- but I don't have time to watch the news. I'm not a TV person. And for the most part, I have two little ones and I work overtime. So there's no time. So that's the reason. But from what I hear, it's all negative, of course.

Q. **[THE COURT]** Do you understand that if you're selected as a juror you must only base your decisions on the evidence that's admitted in this court?

A. Uh-huh.

Q. Can you do that, or do you think you'll be remembering what you've heard from these other people about the case?

A. I would -- I would say yes, I can; but

**[190]**

I can't say for sure 100 percent.

Q. Well, nobody can -- we can't ask perfection from you. We can ask that you honestly and sincerely tell us that you will commit to base your decisions only on the evidence in the case. That's about all we can do.

A. Yes. I mean, yes, I can honestly do that.

Q. And can you look these lawyers in the eye and tell them that's what you will do?

A. Yes. But I also have a question to you after you're done. I talked with Sharon, I believe. She told me to bring something in writing about my children attending private school, and I don't know if I could be here by 8:30 every day. I have to take them to school, and that's a problem.

Q. Is there anyone who can take them to school?

A. Not for that amount of time. I don't have anyone.

Q. Can your husband maybe take them to school?

A. He has to pick them up. They have an aftercare program, but he has to be there by 6:00 o'clock. And he works downtown at the office, and he has to leave by

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5:00 o'clock to be there by 6:00.

Q. What time do they have to be at school in the morning?

A. The earliest I can drop them off is at 7:30. And I have the letter.

Q. I believe you. And you have to drive from Conroe to Houston?

A. Yes.

Q. How long does it normally take you?

A. Well, if I was with him and -- we took the HOV this morning, and it only took like 40 minutes to get here. But it's taken me over an hour sitting in traffic that time of day coming downtown by myself.

Q. Can you drive with him in the HOV lane in the morning?

A. No. Because he has to be at work at 7:00 o'clock. He works 7:00 to 5:00 so he can leave at 5:00 so he can be at the aftercare by 6:00.

Q. We will reimburse you, if you're selected, for your travel expenses. Do you take the toll road in?

A. I do to work. I work on the north side, by the airport. I work for Devon, also. But I've been coming downtown, back and forth. My schedule has kind of changed, but his schedule stays the same. It's 7:00

**[192]**

to 5:00 so he can be there by 6:00.

Q. My point is, if you wanted to take the toll road, you could be reimbursed for paying extra taking the toll road.

A. Right. Of course.

Q. Do you have questions?

Q. **[MR. RAMSEY]** Yes, Your Honor. Ma'am, I want to make something clear. The Judge has stated what the law is of what a juror has to do, but we're all free to disagree at this date as to whether we could do it or might be able to do it.

And the question I'm interested in is one of those answers, the rich get richer, there is never enough money for the higher ups, and they have to steal it.

This is not a test. You don't have to give an answer to make it come out one way or the other.

A. **[JUROR 74]** I feel personally it's an addiction. I mean, that's just my personal -- that's just what I've gotten out of it. Maybe because I haven't watched enough or read enough about the facts, but that was just a statement that I had made.

After I had filled out that questionnaire, I personally thought I should have probably taken more time to think through it. There are some employees that I do know that came from Enron, and I don't think I put that on

**[193]**

my questionnaire. But since then I found out my ex-supervisor came from Enron, Carolyn Gilling (phonetic). We have a contract company that works on our software for our imaging documents, and he also came from Enron.

Q. **[THE COURT]** Have they talked to you about the case?

A. No, they have not. But I -- but also, on the questionnaire at that point, I didn't realize that --

Q. But have they told you -- have they mentioned Mr. Lay or Mr. Skilling, either one of these people?

A. No. No, sir.

Q. **[MR. RAMSEY]** May I ask a little bit of 67, Your Honor.

You suppressed some anger. And I'm not criticizing. I'm just trying to get to the bottom of it. On Question 67, you said you worked for a large corporation and Devon Oil invested money for retirement and felt those involved lost their jobs and investments and you're angry at those people. Would you --

A. **[JUROR 74]** That comes more from my husband.

Q. Okay. Well, I don't care where it comes from. But do you start off with a feeling -- only you know the answer to this -- of some slight anger against

**[194]**

Mr. Lay or Mr. Skilling because you know they were in a position --

A. Just mainly from their company. You know, what happened affected my husband and I both with our investments because Devon changed the way -- you know, they set it up to where you could only put so much -- couldn't put all your eggs in one basket, basically. And my husband is a gambler, and he does smart investing. So he feels it has hurt us.

Q. In a personal way, in a personal loss?

A. Uh-huh.

Q. **[THE COURT]** Are you saying -- did you own stock in Enron?

A. **[JUROR 74]** No. But -- about the same time I worked for Mitchell Energy, and Devon merged -- or Devon bought Mitchell. Okay? And it was -- I believe it was right after this. And that's when -- or right before -- and everything changed, the way it is. A lot of people from Mitchell were upset.

Q. Because you could only invest so much in the 401(k)?

A. Exactly.

Q. Do you understand that was to protect people?

**[195]**

A. Exactly. But like I said, I hear it from my husband. He --

Q. You still strike me as an independent woman. If you sit on this jury, can you tell your husband not to talk to you about the case? In other words, if you sit on this jury, can you base your decision on what you hear in this courtroom? And when he comes home and tells you, "I read about it in the 'Chronicle,' here's what I think," can you tell him, "Dear, that's great, but I'm basing my decision on the evidence in this case"?

A. I can't -- I can't say yes, for sure, no. That's why I was concerned about, you know, possibly being sequestered because of what's going on. I mean, is that a possibility?

Q. No, you're not going to be sequestered. No. Did you have any questions?

Q. **[MR. STRICKLIN]** I do want to get to the bottom of the sequestration?

A. **[JUROR 74]** I'm sorry. People are talking and make me nervous.

A. The idea is being held.

A. **[THE COURT]** You're going to be free every day at 5:00 o'clock. You'll be out of here by 5:00 every day.

A. **[MR. STRICKLIN]** Nothing new, Your Honor.

**[196]**

Q. Mr. Petrocelli?

Q. **[MR. PETROCELLI]** Yes, ma'am. I'm sorry we're asking so many questions. In Paragraph 40 or Question 40, you said that it's a wake-up call for large companies to watch out because they may not be able to get away with fraud anymore. Do you remember that?

A. **[JUROR 74]** Yes.

Q. Do you think Mr. Lay and Mr. Skilling are getting away with fraud? Is there a sense of --

that they're getting away with fraud or may get away with fraud?

A. I think -- personally, I wrote that because I think that companies are going to be more careful about, you know, watching and keeping track of -- I don't know. I wrote what I felt at the time. And like I said, I don't even remember the questionnaire. It's kind of hard to say what I felt, but I filled it out and sent it out. And at the time, that's how I felt.

A. **[THE COURT]** Thank you, ma'am. Have a seat. We can move along. Thank you.

Juror Number 75.

Q. **[MR. PETROCELLI]** Your Honor?

Q. **[MR. RAMSEY]** Your Honor?

Q. **[THE COURT]** I'll get to you in a second.

**[197]**

Juror 75, thank you for your patience. We just have a few questions for you based on your questionnaire.

A. **[JUROR 75]** Okay.

Q. There was a question about the government's investigation.

A. Uh-huh.

Q. And you said, "It has been well done, and the people responsible for the collapse of Enron should go to jail and pay back every cent. The government needs to protect the economy and public from criminal corporate practice."

And then in response to another question, which was, "What is your opinion about the cause of the collapse of Enron," you said, "Executives carried out illegal activities because they were greedy."

And then Question 68, "Of all the things you have heard or read about Enron, what stands out in your mind," and you said, "Crooked executives, cooked books and employees paid the price."

But then when asked later whether -- do you have any opinion about guilt or innocence, you said no.

A. Uh-huh.

Q. I personally have a hard time harmonizing those answers. Could you maybe help me in that

**[198]**

regard?

A. It's a question of who is responsible. There's a lot of executives at a company -- a lot of people could have been part of it who are the individuals responsible for it. It seems that someone was, but who are those individuals?

Q. Do you presume that because Mr. Lay and Mr. Skilling were two of the more senior people, that they are responsible?

A. No.

Q. Do you understand that they are presumed to be innocent?

A. Yes.

Q. And you understand that the collapse of Enron has been a major event in this area?

A. Yes.

Q. Can you conscientiously require the government to prove their guilt beyond a reasonable doubt?

A. I think that I can.

Q. I mean, nobody can go into your mind and heart and find out what your true feelings are. All we can do is rely on your honest answers, and we're doing that. And that's the purpose of this -- these questions.

And there are no right and wrong answers

**[199]**

to these questions. But you indicate that you've read the "Chronicle," "Newsweek" and watch Channel 2 news. Do you read the "Chronicle" every day?

A. Not every day.

Q. How often do you read it?

A. Maybe four days out of the week.

Q. And do you read it cover to cover or particular --

A. No. No. Usually the front page, the main stories.

Q. There have been a lot of stories recently about Enron in this trial. Have you read those?

A. Not all of them, but probably a few.

Q. Did you read all the ones over the weekend?

A. No.

Q. What stands out in your mind from what you have read about the collapse of Enron?

A. Well, a lot of people are upset and that -- I think there is a sense that people want to get to the bottom of this and find out who was responsible for this happening.

Q. If the government failed to prove beyond a reasonable doubt that the defendants were guilty, would you have any reluctance to acquit them, that is, find

**[200]**

that they are not guilty?

A. The government has to prove that they did a criminal act.

Q. I understand that. But if the government failed to do that, would you have any reluctance to stand up as one of the 12 jurors and vote not guilty?

A. My reluctance would be that I think the public -- I think a lot of people feel that they're guilty. And maybe they're expecting something to come out of this trial.

Q. And that's why I'm asking you these questions.
A. Yes.
Q. And if you were to vote not guilty and go back into the community and people said, "How could you do that," there's a sense of moral outrage among some people.
A. Yeah.
Q. And it would take courage to find --
A. It would.
Q. Do you have that courage?
A. It would be tough.
Q. No. We all have to make difficult decisions, and I am not trying to box you in a corner. I'm

**[201]**

trying to find out whether -- and let me tell you another thing. There will be no -- if you are selected as a juror, your name will not be divulged when the trial is over. You'll be free to talk to anybody you want or not to talk to anybody you want. But friends and family members are going to know that you're selected, and you are going to be asked at your workplace --
A. Yeah.
Q. -- about your family, about your family members. Let me just ask you one final time.
A. Sure.
Q. If you were selected in this case as a juror, could you presume the defendants to be innocent?
A. Yes.
Q. And could you require the government to prove their guilt beyond a reasonable doubt?
A. Yes.
Q. **[MR. PETROCELLI]** Can I jump in, Mike? Thanks for your very candid answers. We really appreciate it.

It sounds to me from your questionnaires and answers that you already decided that there was a fraud at Enron. Is that a fair statement?

A. **[JUROR 75]** Yes.

Q. And the defense in this case

**[202]**

is going to be that there was no fraud at Enron. So do you think we have kind of a tough road to hoe with you?

A. Uh-huh.

Q. It would be difficult for you to accept that position?

A. Yeah.

A. Thank you for your candor.

Q. **[MR. STRICKLIN]** Is part of the reason you feel that way, there was a fraud at Enron, because people have already pled guilty to there being a fraud at Enron?

A. **[JUROR 75]** No. If there was no fraud, then how did the company collapse? How did that happen?

Q. Did you know that other people have already pled guilty to that?

A. I did, but I don't know who they all are.

Q. **[THE COURT]** There's one -- there's -- it's one thing to say that there has been a fraud at Enron. It's another thing to say that Mr. Lay or Mr. Skilling are guilty of that fraud.

A. **[JUROR 75]** It is.

Q. [Do you think that because they were the CEO and president at one time, that if there was a fraud, they should be criminally responsible?

A. Not unless it's proven that they were

**[203]**

part of it.

Q. **[MR. RAMSEY]** May I, Your Honor?

One of the things the government would have to prove in order to convict Mr. Lay or Mr. Skilling is that there was a fraud. You already believe there was a fraud?

A. **[JUROR 75]** Uh-huh.

Q. They'd have to present some evidence to you to remove that from your mind, I take it?

A. Uh-huh.

Q. Mr. Lay and Mr. Skilling --

A. **[MR. PETROCELLI]** Answer audibly. She's shaking her head.

A. **[JUROR 75]** I'm sorry. Yes.

Q. **[MR. RAMSEY]** Okay. So part of the government's burden is already pretty much resolved in your mind because you believe that there was a fraud that occurred at Enron?

A. Yes.

Q. The question is who did it?

A. Yes. That's exactly it.

Q. **[MR. STRICKLIN]** You believe there's a fraud at Enron; but in this case, there are specific charges. Do you understand we have to prove specifically in this case that specific crimes were committed?

A. **[JUROR 75]** Yes.

**[204]**

Q. So irrespective of what you believe, a new and different fraud, in your mind here in court -- you can't rely on what you're bringing into court. Can you set that aside --

A. **[MR. RAMSEY]** That's argumentative, Your Honor.

A. **[THE COURT]** Just a minute. Go ahead. Finish it.

Q. **[MR. STRICKLIN]** Can you set that aside and base your decision on what occurs here in court, not what you bring into this courtroom?

A. **[JUROR 75]** No, I don't think I could do that.

A. **[THE COURT]** Okay. Thank you.

A. Thank you.

Q. All right. Is there a challenge to 75?

A. **[MR. RAMSEY]** Yes, Your Honor.

A. **[MR. PETROCELLI]** Yes. She admitted she cannot be fair.

Q. **[THE COURT]** She's struck for cause.

Let's go through the others, from 63 down. Is there a challenge to 63.

A. No.

Q. Is there a challenge to 64?

A. No.

Q. Is there a challenge to 66?

**[205]**

A. No.

Q. Is there a challenge to 67?

A. No.

Q. Is there a challenge to 74?

A. Yes.

Q. Why?

Q. She's under pressure from her husband. She's under financial pressure. She expressed herself very clearly. That's correct. I think she's the one who said we stole. She thinks we stole, Your Honor. And she doesn't want to be on this jury either. She's struggling.

Q. Well, a lot of people don't want to be on the jury.

A. **[MR. RAMSEY]** I know they don't want to be on the jury. Cause on that one, Your Honor.

Q. **[THE COURT]** What do you have to say?

A. **[MR. STRICKLIN]** I don't believe there's cause, Your Honor. She said she could be fair. She looked both of these attorneys in the eye and said that she could.

Q. Motion --

A. **[MR. RAMSEY]** A follow-up question.

Q. **[THE COURT]** We have a lot of questions. The motion is denied to Number 74.

A. **[MR. STRICKLIN]** Your Honor, I do have a

**[206]**

challenge for cause on Juror Number 66.

Q. Why?

A. He was the gentleman who said that he believed if there really was a case we would have brought it in within 60 days and --

Q. But the rest of his answers indicated to me that he could be fair. That's denied.
76?

A. **[MR. RAMSEY]** Did we deal with this lady, on 75?

Q. **[THE COURT]** Yes. Unless you disagree.

A. No. No. I don't disagree with the Court.

Q. How do you do? And thank you for your patience.

A. **[JUROR 76]** Sure.

Q. **[THE COURT]** We just have a few questions based upon your questionnaire. You indicated that you have friends and family members who worked for Enron, and you listed a lady here -- I won't read her name out. Can you tell me what your relationship with her is?

A. Our daughters played on the same soccer team, and basically -- I just heard that she worked for Enron. I don't really know her. I mean, we don't socialize or anything like that.

Q. All right. And then you indicated

**[207]**

that you know someone who lost money, and you listed this person. What is --

A. Again, this was somebody that -- it's all hearsay. What I heard was -- involved with the flight department. And my husband is a pilot, so it kind of trickles down a little bit that way.

Q. Have you ever met this person?

A. No. Never.

Q. Do you know whether he actually lost any money?

A. No.

Q. You read the "Chronicle" and you've talked with friends and you watch O'Rielly and news and radio. Do you read the "Chronicle" every day?

A. No.

Q. How often do you say you read it?

A. Mostly online every once in a while at work. I don't subscribe to it.

Q. Do you read articles about Enron online?

A. Honestly, I have not read -- maybe one or two, at the most. And that was at the very beginning.

Q. There have been a lot of articles recently about the case.

A. Yes. I have not read anything since it

**[208]**

initially happened.

Q. Do you recall any mention of the case on Fox news or radio or anything else?

A. Well, I remember just little bits and parts about -- mostly about the defendants.

Q. What do you remember?

A. What their positions were in the company and, of course, what -- the opinions of the news people and that kind of thing. A few interviews that I remember seeing a long time ago from actual people that worked there, that talked about, you know, what they had lost and so forth.

Q. Do you -- have you formed any ideas about the guilt or innocence of Mr. Lay or Skilling?

A. Only just opinions, nothing decided. There's no way I could decide anything with the little that I know. I'd have to hear everything first.

Q. What opinions have you formed, if any?

A. Well, when you hear things like that, your first opinion is obviously he knew what was going on. He's the CEO.

I'm a financial secretary at my school, and nothing -- every transaction in that school account I know about, in and out, money is going in and out. So, you

**[209]**

know, it just seemed kind of strange to me that he claims he didn't know.

Q. Do you think the superintendent of schools knows about every single transaction?

A. No. No.

Q. Do you understand that there's a difference in your position --

A. Yes. I definitely understand that now.

Q. Now, let me ask you something. If you were selected, do you think that the defendants have to disprove their charges because of what you heard or read?

A. No. I definitely would have to hear proof that it happened the way the indictment is.

Q. Proof by whom?

A. The district attorney's office.

Q. You indicated in response to another question that you -- Richard Causey lives in your city and our daughters were in school together from the eighth grade on. And you said, "I think he knew all along about the company would go under, and that is why he got rid of his stock" -- oh, that's somebody else.

Do you know Mr. Causey?

A. I do not know him personally. I saw him a few times at church. As I stated, our daughters did go to school a few years. That was when my daughter was in

**[210]**

eighth grade -- sixth and seventh, eighth grade. She's now in college. So it's been a long time.

Q. The question I was referring to is about Mr. Lay. And you said, "I think he knew all along that the company would go under, and that is why he got rid of his stock in time for him not to feel any of the effects all his employees did."

And then with respect to all these three people, you said, "I think they are all guilty of knowing what was happening to the company but did nothing to let the employees know." What do you base those two opinions on?

A. Well, again -- and I can understand where you're coming from, that the accounts that I manage are nothing compared to what these people handle. But it just really seemed unusual for me to believe that they had no ideas what were -- you know, that these things were happening or that this would be the outcome.

But again, I don't know how the company works. I don't know how the financial situations are set up and who makes the decisions. And so, again, these were opinions that I formed through the little that I did hear. It's definitely not a decision, obviously. I can't make that kind of decision yet. But just based on -- I don't know. I don't want to say common sense, but it just seems

**[211]**

kind of odd to me that they didn't know.

Q. Do you think they're going to have to disprove these charges in order for you to find for them?

A. No. I think there would have to be a lot of proof against them now for me to believe that they -- I guess I'm not making sense. I don't know how this company worked, the people reporting to him on a daily basis, did he -- if those things are proven to be true, then that's how I'm going to base my decision if I'm selected.

Q. Well, are you going to base your decisions on what you've read or heard or what you hear in the courtroom?

A. What I hear in the courtroom, definitely.

Q. **[MR. RAMSEY]** May I, Your Honor?

You say you have trouble understanding whether they knew or didn't know. But my question is about what do you think, that there was some wrongdoing, some illegal activity at Enron? There's no right or wrong. If you think that, you need to tell us candidly.

Do you think they did something wrong at Enron. In answer to the question, you used words like "management robbed the employees of everything, of their

**[212]**

future." You really believed when you wrote that, I take it, that the employees were robbed?

A. **[JUROR 76]** Well, I guess at the time, when I did hear some of the interviews from the people -- you know, yeah, that there was -- there was some thought that, yes, there was some things going on that were not legal.

Q. Do you still believe there's something -- something went on at Enron that was not legal? I'm not talking about Mr. Skilling or Mr. Lay yet, just Enron in general.

A. I don't know if it was legal or illegal, but I know that definitely something went wrong. There was definitely something, miscommunications or something, going on that caused --

Q. Would that influence your thinking as a juror, do you think? Would they have to offer some evidence to remove that from your mind --

A. No.

Q. -- if you believe that?

A. Well, I would have to hear the evidence that the District Attorney's Office has against that -- or to prove that, rather.

Q. But --

Q. **[THE COURT]** You're going beyond the -- do you have any questions?

**[213]**

A. **[MR. STRICKLIN]** No, sir.

Q. Do you have any questions?

A. **[MR. PETROCELLI]** No.

Q. **[MR. RAMSEY]** I have some more, Your Honor.

A. **[THE COURT]** This is getting beyond what I think is appropriate. I'll give you one more question.

Q. Ma'am, let me -- I'm not blaming you for any of this. Please understand.

A. **[JUROR 76]** I understand.

Q. **[MR. RAMSEY]** Only you know the answer to this. When you say, "I think he knew all along that the company would go under and that that is why he got rid of his stock" -- you're talking about Ken Lay there -- do you believe that Mr. Lay got rid of his stock?

A. Based only on what I heard and --

Q. Do you believe it's true?

A. I don't know. I honestly do not know. I mean, as I said, these are just opinions. They're not my decisions. I tried to be as honest as I could on there and without getting extremely detailed.

Q. Here's the detail that really concerns me; "I think they are all guilty."

A. Right.

Q. Now, there's nothing wrong with thinking that. If that's what you really think, you just

**[214]**

need to tell us that.

A. Okay.

Q. That's what you think; isn't it?

A. It's been a long time since I've answered that questionnaire.

Q. Right. Now, as you --

A. **[THE COURT]** Let her answer the question.

A. **[JUROR 76]** It's been a long time since I answered that questionnaire. Based on just -- you know, the fact that I have not read or kept up with the case in any way -- honestly, I don't know that I should have put it that way.

A. **[THE COURT]** Thank you, ma'am.

A. **[MR. PETROCELLI]** Judge, for the record, if I don't ask any questions, it's because the Court and other counsel have covered it.

Q. Okay. Do you want to challenge her?

A. **[MR. RAMSEY]** Yes, Your Honor.

Q. **[THE COURT]** Why?

A. Because of what she wrote on the paper, Your Honor. She did not adequately explain. She believes that they -- we're entitled to a positive assertion from a juror as to whether -- as to their predisposition. And she said, "I think they are all guilty of knowing what happened," implying that there was

**[215]**

something wrong that happened.

And she said she has opinions about whether Mr. Lay sold stock, which would be a heavy play in this case. She now backs up and equivocates, but she still wrote that down. And it was something that was an article of faith at the time she wrote the paper.

So I believe, Your Honor, this lady -- and she equivocates now. But the truth of it is, I think that her -- evidenced by her writings -- and those are pretty heavy writings -- they were robbed -- the employees were robbed.

Q. She also indicated in response to Question 73 that any opinion she had would not prevent her from being fair and impartial. That's another contemporaneous writing. What do you have to say?

A. **[MR. STRICKLIN]** I believe that the questionnaire is right. Once given the law in this matter, she answered that she could be fair and impartial. And then here in court there was no equivocation. She said that that was done, but now I understand the law --

Q. **[THE COURT]** I agree. Motion to excuse for cause is denied.

A. **[MR. RAMSEY]** We respectfully ask for an additional peremptory for that.

Q. That's denied.

**[216]**

78, would you please come forward. How do you do? Thank you for your patience. We just have a few questions based upon your juror questionnaire.

A. **[JUROR 78]** Okay.

Q. **[THE COURT]** You indicated in response to a question about whether you had heard or read anything about the Enron cases "No." Do you not normally read any magazines or newspapers?

A. Not unless it's something I'm interested in, and it wasn't anything that I was interested in reading in detail. I mean, I've caught glimpses. I mean, I know generally, you know, that the company went bankrupt. And I don't really know much about it.

Q. There has been a lot of mention in the "Houston Chronicle" over the last 7 or 10 days. Have you read the "Houston Chronicle"?

A. No.

Q. Do you subscribe to any newspaper?

A. My partner does, but I don't read it.

Q. Do you watch television?

A. Yes.

Q. Which programs do you watch?

A. Mostly afternoon programs. I think I wrote them down.

Q. **[SPEAKER]** Nothing.

**[217]**

A. **[JUROR 78]** I don't watch much news. I'm too busy.

Q. **[THE COURT]** Have you heard anything about this case?

A. Not really.

Q. Do you recall anyone telling you about the case?

A. I recall -- I think the only thing I recall about the case at all were some employees that went off and did their own businesses. That's just as much as I heard.

Q. All right.

A. **[MR. PETROCELLI]** No, I have nothing.

Q. **[THE COURT]** Mr. Ramsey?

A. **[MR. RAMSEY]** No.

A. **[MR. STRICKLIN]** Nothing from the government.

Q. **[THE COURT]** Thank you very much, ma'am.

Number 84.

A. This way.

Q. How do you do?

A. **[JUROR 84]** Fine.

Q. **[THE COURT]** Thank you for your patience --

A. You're welcome.

Q. -- very much. We'll try to move along as quickly as possible.

A. Okay.

**[218]**

Q. You indicated that your husband used to be a lieutenant with the Houston Police Department?

A. He did.

Q. What area did he work in?

A. I should know that.

Q. I know. That's why I'm asking you. Was it auto theft?

A. No. He -- sometimes he was there, but where he end up -- he ended up in Beechnut, just in charge of the station when he was on duty.

Q. Did -- there may be some FBI agents or other people who testify in this case, who have a law enforcement background.

A. Okay.

Q. Can you --

A. He knew nobody. Is that what you mean?

Q. No. No.

A. Okay.

Q. What I'm talking about is your husband was a police officer, a high-ranking police officer. And you know other police officers?

A. No, I don't.

Q. You don't know any other police officers?

A. No. I mean -- not at Houston. He was

**[219]**

very antisocial. They had to chase him down to give him his going-away gift. He had already gone out of the parking lot. He just wanted out of there.

Q. If you were here and an FBI agent or another law enforcement officer, can you judge the credibility of that person just like you would any other witness?

A. Of course.

Q. Well, some people --

A. I know what you're saying, but --

Q. You can?

A. I've -- I would think I could.

Q. Okay. There was a question, "Have you heard or read anything at all about Enron," and you said, "No."

A. Sorry. No. No. No.

Q. Do you not subscribe to a newspaper?

A. Uh-huh. But I don't want to read that stuff.

Q. What do you read in the paper?

A. I don't read -- do you really want to know what I read in the paper?

Q. Yes.

A. Okay. I get up at 4:00 or 4:30 and I

**[220]**

do Bible study. When I go over the newspaper, I pray over the newspaper articles. I mean, I'm supposed to be up here telling you the truth.

Q. You are.

A. I don't read the comics. I read the recipes.

Q. All right.

A. But I just -- you know, there's too many things in my life that are messed up to have to --

Q. Do you listen regularly to any news programs?

A. I listen to KSBJ and books on tape.

Q. Which books on tape do you recall listening to?

A. The last one I listened to was Beverly Kingsbury, a Christian author.

Q. You indicate that your husband has had a stroke.

A. He has.

Q. And it says, "Can look after self on a day-to-day basis." Can you -- I don't mean to pry.

A. You can say anything.

Q. No. But, I mean, is he able to take care of himself?

A. You're the Judge. Yes. And when I got

**[221]**

that thing, I think it said don't talk to anybody, just do it. And I just did it. And when I answered that question, I thought, gosh, I'd like to tell him to lie to them and tell them that he needs me every day, you know, so I knew I would get out of it.

But I had just gotten home from a week's trip and he had to stay home by himself, and I had to answer you truthfully. And that's what I did.

Q. Is he doing okay?

A. He's doing as well as he wants to. I don't know what else to tell you.

Q. **[MR. PETROCELLI]** I don't have any questions.

A. **[JUROR 84]** Oh, come on.

Q. **[MR. STRICKLIN]** I've got a watch.

A. **[JUROR 84]** I sat there and waited for everybody.

Q. **[MR. PETROCELLI]** You gave all the right answers. Thank you very much.

And Number 87. How do you do? Thank you for your patience. We're trying to move along as quickly as we can.

A. **[JUROR 87]** Thank you.

Q. **[THE COURT]** We just have a few questions to you based upon your questionnaire. You said that you have a friend who is the Fort Bend County DA?

A. John Healey, uh-huh.

**[222]**

Q. Is he a close friend?

A. No. Through my volunteer efforts in the Sugar Land Police Department. I've been around him. I don't know him personally. Don't socialize with him.

Q. What exactly do you -- what exactly is the police volunteer organization?

A. Sugar Land has a citizen's police academy. And when you take it and graduate, then you can join their alumni, which then you stay in the community and volunteer and help bring together citizens in the community in law enforcement.

Q. And you also train -- you've had training sessions with the district attorney and the FBI. Is that correct?

A. I go to region and state meetings. I'm a graphologist. I'm just very interested in it but strictly from the back -- the sidelines as a citizen volunteer.

Q. There may be an FBI agent or two who testifies in this case. Because of your dealings with law enforcement people, would you tend to believe what they say without any skepticism or evaluating their credibility?

A. Probably to the contrary. I work in a big corporation, too, and I don't believe all the managers there. We're all human.

**[223]**

Q. So you wouldn't -- you would judge the credibility of an FBI agent just as you would anybody else?

A. Absolutely.

Q. You indicated that you read the "Chronicle," watch Channel 13 news, The O'Reilly Factor and you've talked with friends and scanned Internet sources about this case. Have you formed any opinions about the case?

A. Only that something went wrong. But whether it's illegal or not, what occurred, the evidence will hold that up or reveal that. I don't know if that answered the question.

Q. That's perfect. Take as long as you need to answer. There are no right or wrong answers. Do you have any impression based on what you've read or heard that Mr. Lay or Skilling must be guilty of something?

A. Are they guilty of something illegal?

Q. Yes.

A. Or are they just guilty of being poor managers or poor businessmen? I don't know. I have not formed an opinion on that.

Q. Well, have you formed an opinion whether they're guilty of some criminal conduct?

A. No.

**[224]**

Q. You heard what I said earlier about the presumption of innocence?

A. Right.

Q. That they're presumed to be innocent?

A. Right.

Q. Can you conscientiously follow that instruction?

A. I think so. Given the evidence, absolutely.

Q. If the government should fail to prove them guilty beyond a reasonable doubt, would you have any reluctance in writing down not guilty on the jury form?

A. If the evidence --

Q. If the evidence --

A. -- shows that? Absolutely not.

Q. Well, see, the evidence -- they don't have to disprove the charges.

A. Right.

Q. The government has to prove the charges. If you were not satisfied that the government had proved their guilt, could you find them not guilty?

A. Yes. I wouldn't have any other recourse if that was what the evidence showed.

Q. Now, you indicated that you admire

**[225]**

Sherron Watkins for her bravery in bringing the case to the public. She may be a witness in the case. Do you know her?

A. No.

Q. Have you ever talked to her?

A. No.

Q. Could you listen to her from the witness stand and evaluate her credibility like any other witness?

A. I think so. I admire the fact that she had the courage to come forward and say something is not right. Now, what that is that was right or wrong, I don't know. And I am not going to form an opinion -- I mean, it would only be an opinion if you heard it from the news media. I think this case -- you have to present facts, and that's what needs to be dealt with to form guilt or innocence.

Q. Have you formed any opinions from reading the "Chronicle" or watching television about Mr. Lay or Mr. Skilling's guilt?

A. No. No.

Q. Mr. Petrocelli?

Q. **[MR. PETROCELLI]** Yes. Thank you, Your Honor.

I notice you wrote in your questionnaire some words about greedy. Is it -- do you have the opinion

**[226]**

that Jeff Skilling and Ken Lay are greedy people and that's what helped cause the demise of Enron?

A. **[JUROR 87]** I don't know that it's the two of them. I'm a little confused that you're trying them together. I mean, one could be innocent and one be guilty. I don't know that they're in this together. I don't get that feeling at all.

Q. Do you have any opinions about whether one is innocent and one is guilty more than the other, any sense of that at all?

A. No. More curiosity. The more I read, the more questions I have and no answers.

Q. Getting back to my first question on the greed issue, the government is going to be saying that they're greedy. And you seem to already think that, and I'm concerned about that.

A. No. Somebody there is. And I do feel for the people that have lost their life savings. I work for a big corporation. I could go back to work and see that my stock, my 401 is gone. And I hope that someone like the government is looking out for that to protect my interest. But what went wrong there, I don't know.

Q. Okay.

A. **[THE COURT]** Do you have any questions?

Q. **[MR. STRICKLIN]** Just about being -- them being

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tried together. They are tried together, but you would -- if you are to sit on the jury, you would have to come out with separate verdicts as to each.

A. **[JUROR 87]** Okay.

Q. The government would have to prove its guilt to each of the defendants.

A. I was confused.

Q. Is that okay with you?

A. Yes. And I would feel better that way because I wouldn't want mine to be --

Q. **[THE COURT]** Now, there will be separate questions about each one.

A. **[JUROR 87]** Okay. I have a question. I lost my father a month ago today. He was living in the state of Alabama. It's a six months' probate. I've already gone there and handled a lot of it, but I am going to be required to go back or to help my three siblings with settling his estate. I could do that on weekends. If this went for four or five months, it might be a burden for me or it would transfer to my siblings.

Q. Probably it will go -- my guess is about four months. But we're not going to have court on Friday, so you can certainly --

A. So a three-day weekend, that would be good.

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Q. -- get back Sunday evening.

A. **[MR. PETROCELLI]** We're all happy about the three-day weekend, Judge.

Q. **[MR. RAMSEY]** Could I do a follow-up?

A. **[THE COURT]** Yes.

Q. Ma'am, you stated that you admire Ms. Watkin's bravery. Would that give her a little more weight as a witness in your mind than an ordinary witness?

A. **[JUROR 87]** No.

Q. **[MR. RAMSEY]** Okay.

A. And I've even wondered if she had any involvement in it. I don't know on that. But I work for Schlumberger. You've seen it there. And I work with audit -- internal audit there. And I've seen some actions that would surprise you, that -- people that you might respect or thought you knew. So you never know the full story until you dig into it.

So, no, I have not made any set determinations on any of the individuals. I just -- I know how it is with a woman in the corporate world. It's getting easier now. But I'm sure that that's more where I was going to, was that I respected her bravery to just bring the issue to the surface.

Q. Are you leaning one way or the other, either for the prosecutor or the defense in this

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case, as you start off?

A. No. I think it's a real tough situation for everybody involved.

Q. **[THE COURT]** Thank you, ma'am.

A. **[MR. RAMSEY]** Very good.

A. **[MR. PETROCELLI]** By my count, that's 30.

Q. **[THE COURT]** Are there any objections to 78, 84 or 87?

A. Let me get my glasses out.

Q. 78.

A. No. No. No.

Q. **[MR. STRICKLIN]** No, Your Honor.

Your Honor, one matter on Juror 57 that was Ms. Kahanek's friend.

A. **[THE COURT]** Yes.

Q. She -- Ms. Kahanek, I've been informed, was listed with the defense as a witness for the defense. And we didn't read out -- because of the Court's admonitions that she is an employee at Enron, we didn't read out her name specifically as a witness in this case. I think the Court ought to inquire whether her being a witness, since she is such a close friend --

A. **[MR. PETROCELLI]** We're not going to call her.

A.. **[MR. RAMSEY]** We're not going to call her.

A. We'll take her off the witness

**[230]**

list.

A. **[THE COURT]** As I look at this, we've got 30 people.

A. **[MR. PETROCELLI]** By my count.

A. Okay. We're going to take a 15-minute recess. When we get to 38, we're going to stop and strike.

Q. Do we do -- okay. Is that how -- but the first 30 is for the jurors in the box. And then we do eight for the alternates? Do we do them separately?

A. No. Well, you fill them in on the questionnaire. I'll explain the procedure, Mr. Ramsey.

Q. Because we were assuming we would do two strike panels, 30 for the jury. Because it's 18 -- I mean 12 and 18, right?

A. **[MR. STRICKLIN]** It's 30 for the jury and the next eight for the alternates. Two strikes for the alternates.

A. **[THE COURT]** That's right.

Q. **[MR. PETROCELLI]** Right. So we've got to go through eight more to get the alternates.

A. That's right.

A. Okay.

Q. But I think we're going to pick

**[231]**

some alternates.

A. We are.

Q. We're going to -- all right. We're going to take a 15-minute recess. We'll be through with this process, I'm confident, in another hour or so. I appreciate your patience, and we'll come back in about 15 minutes.

Let me have these 12. Be back in 15 minutes. We stand in recess for 15 minutes.

(A recess was had at 2:40 p.m.) (The following was had before the jury panel)

Q. **[THE COURT]** Please be seated. Where is Mr. Ramsey?

A. **[MR. STRICKLIN]** Both sides?

Q. We're going to use both sides.

The media who are following this case from remote facilities asked that we not do the bench conferences privately, that we relay those to the remote facilities.

The reason we're not doing that, we are not going to do it for the rest of the trial, is because sometimes a potential juror will wish to discuss something in confidence and I will seal that portion.

So although the majority of the bench conferences will be available to the media should they

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desire a transcript, there are certain matters that I have sealed and may seal in the future. And it's difficult to seal a personal matter if I'm half into the discussion before I realize it's personal. So that's the reason for this procedure. Well -- where is the -- you need to get on this side.

A. **[MR. PETROCELLI]** Your Honor, we didn't want to block you while you were talking.

(The following was had at the bench)

Q. **[THE COURT]** Would Juror Number 90 please come forward. Right up here. Thank you for your patience, sir, in waiting. We just have a few questions for you based on your questionnaire. We'll try not to keep you too much longer.

There was a question about the -- your opinion as to the cause of the collapse of Enron. And you indicated, "A small, average worker saves money for retirement all his life. It is not right for someone or anyone to take or try to take this part of his life away from him."

And you base your opinion on what you have heard from co-workers and your wife and the news, but you don't understand exactly what happened and how many people were involved?

A. **[JUROR 90]** Right.

**[233]**

Q. I guess what I'm trying to find out is: Do you think the defendants are criminally responsible for the fact that people may have lost their income because of the collapse at Enron?

A. It's possible.

Q. Pardon me?

A. Possible. I don't know.

Q. Well, do you understand that's what this case is about? The government has to prove that they are guilty beyond a reasonable doubt. The defendants start out with a presumption that they are innocent.

Now, can you follow that presumption?

A. I should be able to.

Q. I mean, is there anything about what you've read or heard or what people have told you that leads you to conclude that these defendants are probably guilty?

A. No.

Q. You understand that it's the government's job to prove guilt beyond a reasonable doubt? And if the government should fail to do so, you must find the defendants not guilty. Do you understand that?

A. Correct, yes.

Q. And do you have any problem with that allocation of burden?

**[234]**

A. No.

Q. In response to another question which I asked you, "What stands out in your mind about what you've heard and read?" you said, "I don't know what kind of scam or fraud or really what happened in detail. I just know a lot of people lost money and their jobs."

Now, it's true that a lot of people did lose their money or their jobs. Do you think that there must have been some type of fraud involved?

A. It's possible. I don't know.

Q. Well, that's the thing. We want people who don't know and will start this trial with an open mind. But we're concerned that people, based on what they've read or heard, may have already reached a conclusion.

A. Wrong conclusion.

Q. Have you reached a conclusion?

A. No, not really.

Q. Do you think as you stand here today that because Enron collapsed that either Mr. Skilling or Mr. Lay, or perhaps both of them, must be criminally responsible?

A. No.

Q. What newspapers do you normally read?

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A. I just -- I read the local, and sometimes I'll read "The Chronicle" at work, but --

Q. You're from Porter. What's the local paper there?

A. "Montgomery County" -- I forget.

A. **[MR. RAMSEY]** "Courier."

A. **[JUROR 90]** "Courier." That's it.

Q. **[THE COURT]** Has it covered this case?

A. No, not at all.

Q. How often do you read "The Chronicle"?

A. Very seldom.

Q. When you do read it, which sections do you read?

A. Advertisements. Nothing that pertains to any legal matters or anything like that. Comics. I usually don't have that much time to read it.

Q. Do you normally watch news programs on television?

A. No. I hate to watch the news. It depresses me.

Q. Okay. I don't have any other questions.

Mr. Ramsey?

Q. **[MR. RAMSEY]** The basic questions are: Do you
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believe that there was a scam or a fraud at Enron?

A. **[JUROR 90]** I don't know.

Q. Do you have an opinion one way or the other?

A. I have no opinion.

Q. Do you lean one way or the other as far as the guilt or innocence of these people are concerned, just in the gut?

A. No, I can't lean either way.

Q. **[THE COURT]** Do you have any questions?

A. **[MR. STRICKLIN]** No, sir.

Q. Thank you very much. You can go back and have a seat.

Juror Number 91.

Thank you for your patience, ma'am. We're moving along as quickly as we can. We just have a few questions --

A. **[JUROR 91]** Sure.

Q. **[THE COURT]** -- based on your questionnaires.

You indicated that you read "The Chronicle" and that you watch Channel 13 and that you've talked to various people about this case. And then, in response to some later questions, you say that you're unsure whether you could follow my instructions that you must base your decisions solely on the evidence.

**[237]**

A. Uh-huh.

Q. And when asked why you were unsure, you said, "The things that I have read, seems like these people cheating other people at this company."

What have you read about this case?

A. Well, mainly, it's just people that have talked to me about other people that have lost money. And, you know, I don't know a whole lot about this case, honestly. It's only from other people's word of mouth telling me what they -- their opinions of this case has been.

Q. And are these former Enron employees?

A. Actually, friends of Enron employees.

Q. And what have they told you?

A. They have told me that they have lost all of their savings, that people that have worked there at Enron, that their 401(k) -- you know, that they've lost everything and having to start over.

Q. Do you think that because the company failed somebody must be criminally responsible?

A. No, I don't. I own a company myself. So...

Q. What we're looking for is people who can base their decision based on the evidence in this

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courtroom and not on what friends or co-workers or the media may think about the case.

A. True.

Q. If you were selected, could you do that? Could you base your decision on the evidence in this courtroom?

A. Yes, sir.

Q. Do you think that based on what your friends and co-workers have told you that the defendants have an obligation to prove that they are not guilty?

A. Say it one more time.

Q. That the government has the burden of proving guilt. I told you this morning that the defendants are presumed to be innocent.

A. Yes.

Q. Based on what these friends and people have told you, are you going to have the defendants be required to disprove the charges against them? In other words, reverse the burden of proof?

A. No.

Q. All right. How often do you read "The Chronicle"?

A. Maybe once a month.

Q. Do you subscribe?

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A. No.

Q. Where do you get it?

A. I get it at the CVS. And I pick it up for various reasons, for entertainment or stuff like that.

Q. Did you read the last few days' discussions about the case?

A. No.

Q. You watch Channel 13.

How often do you watch the news on Channel 13?

A. Maybe once a week, if I catch it.

Q. Do you recall anything in particular that you've seen on the news?

A. No.

Q. Mr. Petrocelli?

Q. **[MR. PETROCELLI]** Yes. In your questionnaire, ma'am, you indicated in response to the question of whether you could be impartial, and you said you were unsure. You checked that box there.

Can you just help us on that, because obviously, we need people who are sure that they can be impartial.

A. **[JUROR 91]** I guess, because of just the things that have been said, that it would be hard for me to answer that. I'm sure at that moment that was I answering this.

**[240]**

Q. And how do you feel right now? Can you give me your word, my client your word, that you could be totally impartial, or are you still unsure?

A. I really think that I'm a pretty honest person. So I would be with ever what was said to me or ever how the evidence and everything was presented to me, it would be -- I would base my opinion on that. I'm sure of that.

A. Okay.

Q. **[THE COURT]** What did you want to ask?

A. **[MR. STRICKLIN]** Nothing, Your Honor.

Q. **[MR. RAMSEY]** Ma'am, at the very bottom of things, do you believe that there was some criminal conduct at Enron?

A. **[JUROR 91]** That's what I -- I hear that. Do I know that myself? No.

Q. Do you believe it?

A. Do I believe you? I believe something happened. I don't know what.

Q. Was it criminal that happened? Did somebody steal or commit fraud or something in your own mind?

A. Did somebody steal? You know, I'm unsure of that.

Q. **[THE COURT]** Let me ask you: Do you think that

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Mr. Lay or Mr. Skilling probably stole something at Enron?

A. **[JUROR 91]** I think that for me to say I think they stole, I don't know. I'm unsure of that.

Q. What do you think about their involvement?

A. I think it could be in many different ways. They could have been not told things. They could have -- I think that in a company -- I think of my own company, you know, I don't know all of my accounting that goes on. I don't know a lot of things that goes on in my own business. So...

Q. Will you base your decision in this case on the evidence that you hear?

A. Yes.

Q. Thank you.

Number 93.

A. **[MR. STRICKLIN]** Your Honor, while we're awaiting that juror, I have the objection to the form of the question when Mr. Petrocelli is asking "Can you promise me and my client?"

Q. **[THE COURT]** I'm allowing a lot of leading questions by both sides. I'm trying to cut them out, but I'm trying to move along.

Come up here, please, sir. Thank you for waiting.

**[242]**

A. **[JUROR 93]** No problem.

Q. We just have a few questions based upon your questionnaire.

A. All right.

Q. And we'll try not to take too much of your time. There are no right or wrong answers.

You indicated -- there was a question, "Have you heard or read anything about the Enron case?" And you said, "No."

Do you normally read a newspaper every day?

A. I have since. I've just seen a little bit in the news, but I don't normally read the newspaper, no.

Q. Have you read "The Chronicle" in the last 8 or 10 days?

A. No, sir.

Q. What news programs to you normally watch?

A. I try to catch it at 10:00 o'clock, if I can, in the evening. I'm too busy with my all my kids and stuff. By the time I get a chance to settle down in the evening, it's gotten that late, and I don't have time to watch the news.

Q. Do you recall any particular

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statements that may have been made about this case on what you've heard or read on the news?

A. Not anything in particular.

Q. Do you remember anything about Mr. Skilling or Mr. Lay that you may have heard on the news?

A. No.

Q. Do you have any questions?

A. **[MR. PETROCELLI]** No.

A. **[MR. RAMSEY]** No.

Q. **[THE COURT]** Do you have any questions?

A. **[MR. STRICKLIN]** No, sir.

Q. Thank you very much.

A. **[JUROR 93]** I have one thing to add. It would put a huge financial strain on my family if I was stuck here. I have five children. I get paid by the hour. And I'm the primary breadwinner for my family. And to be here four months would just be pretty much unacceptable.

Q. **[THE COURT]** Does your employer reimburse you?

A. No, sir, not at all. And there's no way I can make it with five children. I have an infant and four kids. In fact, I got one sick today that I got called to go pick up from school, and there's no way I can do it.

Q. Thank you.

What do you want to do about him?

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A. **[MR. PETROCELLI]** Judge, I feel so bad for the guy that I think we ought to let him go, even though I think he's a good juror.

Q. **[THE COURT]** I think so, too. I have a bunch of these emergency excuses.

A. But on the assumption that it's not going to open the floodgates.

Q. What do you think?

A. **[MR. STRICKLIN]** I totally agree. He's got five kids. It's an unusual circumstance. We're going to excuse 93 for cause.

Q. **[THE COURT]** Okay. Juror Number 96.

Thank you for your patience, sir. We'll try to not take too much of your time. I have a couple of questions.

You indicated that you have experience in accounting and bookkeeping and you are on the board of a public company and many -- many committees. I'm not sure what that says.

A. **[JUROR 96]** Many committees, roles including the audit committee.

Q. What public company are you on the board?

A. Nevada Gold. It's here in Houston. It's on the American Stock Exchange.

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Q. Do you -- have you formed any opinions about the guilt or innocence of Mr. Skilling --

A. No, sir.

Q. -- or Mr. Lay?

A. No, sir.

Q. Have you formed any opinions about what the Enron audit committee should have done?

A. I think it would be difficult not to have an opinion, but I don't have the details. I just know what I'm expected to do as member of the committee of the public company that I'm on.

Q. When you get back into the jury room if you are selected, one of my instructions is going to be that you are to base your decisions on the evidence that you hear in this courtroom and my instructions concerning the law. And that it would be not -- it would not be proper for you to either base your decision on your own experience or to impart your own experiences to the other jurors.

A. Yes, sir.

Q. Could you follow that instruction?

A. Yes, I can.

Q. You also indicated that you have friends who owned stock in Enron.

Who owned this stock?

[246]

A. Well, make sure. Yeah, I do.

Q. And did you sell in 2001?

A. No. I have a copy of the statement here.

Q. How much did you lose?

A. About $5,000.

Q. I don't want you to tell me how much you earn, but is that a significant or insignificant amount of your total financial picture?

A. It's insignificant.

Q. Do you feel that Mr. Lay or Mr. Skilling should be held criminally responsible because of your loss?

A. No. I feel like I should be -- that would be too hard a decision at the time.

Q. You weren't the only one who made it.

Can you tell me -- this question said, "Have you or any family member ever been employed by a company that has been affected by the Enron bankruptcy?"

What does this mean?

A. I was an officer of a digital consulting and software services. We had the Enron broadband account. We sold them most of the storage for that area. And we had cutbacks in that area after the

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company filed Chapter 11.

Q. Did you lose money in the Chapter 11?

A. No, the company did. PCS did. I was just an employee.

Q. Did your income depend on the earnings?

A. No.

Q. You indicated that the -- you have an opinion about the collapse of Enron. You put "Corporate greed."

Can you expand on what you mean by that?

A. I have -- when I filled this out, I got two summons at the same time one for county court here, and I filled them out both at the same time. I'm on a list. I have been -- I've served on at least a minimum of five juries in the last probably 10 years here in Houston, if you check the records. And so I don't know what happens. And I've got to show up. You know, what happens here in March for the county?

Q. If you're selected, you have an excuse from that one.

A. I understand. My first one --

Q. **[MR. PETROCELLI]**You are on a list.

A. **[JUROR 96]** I have it with me here. I -- I don't

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know why, but I'm a little frustrated. Being an officer of a small public company that has less than 200 million market cap, it's a big burden to us. It's a large expense we haven't had before. When we feel like we're doing our best to watch our financials and make sure we take care of our shareholders, sometimes I think that it's been a major problem because of a few incidents.

Q. **[THE COURT]** Do you blame that on the collapse of Enron?

A. No. There have been several in the last couple of years.

Q. How often do you read "The Chronicle"?

A. Every day.

Q. The whole paper?

A. Yes, sir.

Q. Do you read all the articles about Enron?

A. I have been, yes, sir.

Q. Have you formed any opinions based on reading those articles?

A. No. It's more confusing, the more you read. Because it's -- I'm sure that it's one person's opinion, or it's the bias of the editorial or the author of the article.

**[249]**

Q. Have you --

A. I have --

Q. Do you watch "The O'Reilly Factor" or Rush Limbaugh on Channel 13? Have you formed any opinions based on watching of listening to those folks?

A. No, sir.

Q. Do you have any questions?

Q. **[MR. PETROCELLI]**Yes, I do.

Given that you're an avid reader of "The Chronicle," have you read about any guilty pleas in this case over the last month or two?

A. **[JUROR 96]** No. Oh, one, yes.

Q. Who was that?

A. It was -- I don't recall the individual, but I believe it was the -- it wasn't the CFO. It was somebody in that capacity, I think, accepted or pled guilty and accepted a plea.

Q. Does that cause you -- assume that that's the chief accounting officer who pled guilty.

Does that cause you to have any views about the accounting at Enron?

A. No.

Q. Are you able to not count that against our clients?

A. Yes.

**[250]**

A. Okay. Thank you.

Q. **[THE COURT]** Any questions?

Q. **[MR. STRICKLIN]** You say you do the Sarbane-Oxley accounting. You said you don't blame Enron for that.

Do you blame me, and I'm with the government?

A. **[JUROR 96]** I think that it's a little bit of an immature reaction, not just with you. Not with the government. I think, you -- you've got Enron, a lot of things have happened. And finding out about the things sooner, but it's a large burden for the small corporation to try and stay in compliance and be able to pay -- figure out who is involved in dealing with compliance. It's a lot of burden for the small company.

Q. Would you hold that against the government presenting the case? I mean, we have to present the case to you beyond a reasonable doubt. Is that something you're going to hold against us?

A. No.

A. **[THE COURT]** Thank you, sir.

Q. **[MR. RAMSEY]** Can I ask one question?

Q. What do you want to say?

A. **[JUROR 96]** I have information that I don't know if it's relevant or not. I'm on charitable organizations over

**[251]**

the city, and one of them is Neighborhood Centers and I have traditionally been on the technology committee for IT. It's the largest United Way organization here in the city. I've recently been asked to be on another committee, and I noticed in our correspondence -- I have not met with Mr. Lay, but let me show you. Here's correspondence from the COO, and I notice that he is also on that committee.

Q. **[THE COURT]** Would the fact that you might be on a committee that Mr. Lay is now serving on prevent you from being fair and impartial?

A. No, sir. I just thought that it should be disclosed.

Q. You did exactly the right thing.

What do you want to ask him?

Q. **[MR. RAMSEY]** I want to ask him about the business columnist that writes for "The Chronicle." I won't mention his name right now.

Are you familiar with a business column that he's written opinions --

A. **[JUROR 96]** Yes, sir.

Q. -- rendered in "The Chronicle"?

A. Yes, sir.

Q. You know the guy I'm talking about?

A. Yes, sir.

**[252]**

Q. Are you familiar with him?

A. Yes.

Q. Okay. Now, he has said things like -- things as strong, "I think Ken Lay ought to be in a cold iron cage," things of that sort. Opinionated things.

Has he influenced you one way or the other? Do you believe in the guy? Do you follow him?

A. No. He's recently joined "The Chronicle" staff from outside of the city. He hasn't been with Houston that long. I just read it for entertainment.

Q. Do you know the guy?

A. I just remember when he joined "The Chronicle" editorial staff.

Q. **[THE COURT]** Thank you, sir.

A. **[JUROR 96]** Yes, sir.

Q. Number 99.

Up here, please, ma'am. Thank you for your patience. We have a few questions. There are no right or wrong answers.

When you were asked earlier, "Had you read any or heard anything about the case?" you said, "No."

We just wondered, have you read or heard anything about the case since you filled out the questionnaire?

A. **[JUROR 99]** Not really.

**[253]**

Q. **[THE COURT]** Do you take a newspaper daily?

A. No.

Q. Do you subscribe to any magazines?

A. Not the ones -- unless I buy them.

Q. What do you normally buy?

A. "Cosmopolitan" or "Fashions."

Q. Do you watch TV discussions or TV news?

A. No, not like the news.

Q. Where do you get your news?

A. Basically what my parents tell me or what friends tell me.

Q. Have your parents told you anything about this case?

A. I really don't -- I mean, I've heard this and that, but I don't know the details on what it is or what made it what it is.

Q. Do you have any impressions about whether Mr. Lay or Mr. Skilling are guilty of anything?

A. No.

A. **[MR. PETROCELLI]** Nothing, Judge.

A. **[MR. RAMSEY]** No questions, Your Honor.

A. **[MR. STRICKLIN]** Thank you. Thank you, ma'am.

Q. **[THE COURT]** Number 110. We are really making progress.

**[254]**

Thank you, ma'am, for your patience. We'll try to not take too much longer.

You indicated in response to a question that you lost money from a mutual fund from the Enron collapse. Can you tell me a little bit about that?

A. **[JUROR 110]** Well, it's just a 401(k) that I'm in. I don't exactly remember the numbers, but we did lose.

Q. Do you know how much you personally lost?

A. I contribute 8 percent. Now, the amount that was lost, I don't remember at the time. You know, right now I don't. It wasn't a lot.

Q. It was not a lot?

A. No.

Q. Is there anything about that experience that would prevent you from being a fair and impartial juror?

A. Well, the only problem I have with being a juror is that it's 3:25. I've been up since 6:00 p.m. last night because I work nights. And I've got to go back to work tonight. So it's just kind of hard. I can't take off because they only give us two weeks of jury pay. For me that's one week, because I work 80 hours a week. And I'm off the next week.

Q. You know you'll be paid for jury

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duty.

A. $40 a day?

Q. Well, and expenses. I mean, we're doing the best we can. I know that's a significant hardship.

A. Yeah.

Q. Is your husband now employed?

A. My husband is retired.

Q. Does he have any income from his retirement?

A. He has some income, yes. See, the main thing is I have a sister that died from kidney cancer. She was 51. And she has four kids in college. And it's getting kind of hard. You know, like, last Wednesday we just closed on a house for the kids. So my extended family is my problem.

Q. Okay. You've already talked about your 401(k).

In response to questions about people who have been affected by the collapse of Enron, you said, "It should not have happened. The top folks got too greedy."

And on what you base your opinion the fact that "They knew what was going on and sold their shares, but not the employees."

What do you base that on?

**[256]**

A. What I heard on the news. What I read the "Daily Court Register."

Q. Do you think that what you read in the newspaper is true?

A. Well, not all the time, it's not.

Q. Do you think it's true in this case?

A. I have mixed feelings about it.

Q. What are your feelings?

A. Well, to me, it's like the amount of money and the amount of people that were affected and for nobody to know what was going on, it just doesn't seem possible that somebody didn't know something.

Q. Well, there may have been a lot of people who knew what was going on, but this case only involves two people --

A. That's true.

Q. -- Mr. Lay and Mr. Skilling.

A. Uh-huh.

Q. Have you formed any opinions as to whether Mr. Lay or Mr. Skilling knew what was going on?

A. I don't know. I don't know.

Q. Have you read anything in the newspaper that stands out in your mind about them?

A. I haven't read anything in the

**[257]**

newspaper. I just heard that, between the two of them, they had $43 million to contribute for their case and that there was an insurance policy that they could collect on, also.

Q. Where did you learn that?

A. This was just something I overheard today -- other jurors talking.

Q. Does that make you think that they must be guilty of something?

A. It doesn't make me think they must be guilty of something, but to have an insurance policy ahead of time.

Q. Let me just tell you that most corporations provide insurance for their officers and directors.

A. Okay.

Q. The type of insurance varies from corporation to corporation. There's not anything unusual about that.

A. Uh-huh.

Q. What I want to know is: If you're selected as a juror, can you base your decision on the evidence in this case? That's what we're really trying to find out.

A. Possibly.

**[258]**

Q. Well, possibly. Can you tell us?

A. Well, I didn't know what this case really was about until today because I was just under the assumption that this case was about all the folks that were affected. I didn't realize that this case was being brought on because of the Security Exchange stuff. You know, so I'm kind of like mixed on it, because I don't know. I don't know any facts about that.

Q. Well, nobody expects you to know the facts. What we want are people who can base their decision on the facts that they hear in the courtroom. We really want people who can start with an open mind, who don't have any preconceived ideas.

Now, how does that relate to you? Do you think you're going to come here, if selected, and base your decision on something people have told you or that you may have read, or will you be able to base your decision on what you hear in court?

A. Having watched so much "Matlock," probably what I hear in court.

Q. Okay. That's one of the best answers I've heard today.

In response to another question, which said, "Based on what you've heard or read or had been told, do you have any opinion about the guilt or innocence?" And

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you said "yes" as to Mr. Skilling and Mr. Lay, that they are guilty.

And then, in another question which asked, "After the Court has given you these instructions, could you be impartial?"

You said you were unsure. And you wrote, "Not sure if I could be fair."

Can you be sure that you are fair?

A. I don't know. You know, if it's -- if I'm going on based on what's presented in the Court, I think I probably could be fair. At the time of the questionnaire, like I said, I'm thinking it's based on all the folks that were affected.

Q. You thought it was a damage case?

A. Right. Right.

Q. Oh, okay.

Mr. Petrocelli?

A. **[MR. RAMSEY]** Go ahead. Dan, I thought you'd passed.

Q. **[MR. PETROCELLI]** Ma'am, is there anything about Mr. Skilling?

A. **[JUROR 110]** No.

Q. If you find out that he's the president and CEO, does that make you think that he was or was not involved in any wrongdoing?

**[260]**

A. It doesn't make me think that he was or was not involved. It's just hard to think that the top doesn't know what's going on.

Q. And why did you put on that you thought he was guilty? Guilty of -- why did you say that?

A. I guess I said that because of everything I'd seen on TV and a lot of stuff that was in the "Wall Street Journal."

Q. And you read that stuff?

A. Well, every now and then. I don't subscribe to the newspaper.

Q. **[THE COURT]** Where do you read the "Wall Street Journal"?

A. **[JUROR 110]** At work.

Q. Do you recall any particular articles that you have read?

A. The last articles I read really were like in the "Court Register" when they were talking about jurors, are they out there, and Ken Lay and Skilling -- the Judge has denied the move of the trial.

Q. That's true.

A. Yeah.

Q. What did you think about that?

A. I was surprised.

**[261]**

Q. They were too. I just rule as I think appropriate.

Let me ask you something. We're not going to take much more of your time. If you are selected, can you in your heart of hearts assure us that you will base your decision on what you hear in this courtroom and not what you may have read about the case?

A. It will be based on what I hear in the courtroom.

Q. Mr. Ramsey?

Q. **[MR. RAMSEY]** Yes, Your Honor.

Ma'am, I represent Ken Lay. And the Judge -- there's nothing wrong with this answer. It's just a true answer. It makes me nervous when I read here that -- where you said, "I'm not sure I could be fair." If you feel that way, tell us. If you really feel that you can't be fair, there's nothing shameful about it if it's based on what you read. We vote for presidents based on what we read.

A. **[JUROR 110]** Right.

Q. If you feel that way, tell us about that.

A. Well, now, when I wrote that, it was based on what I thought the case was about.

Q. Okay. And you thought the case

**[262]**

was about -- did you think it was about fraud?

A. Uh-huh.

Q. Do you think fraud happened at Enron?

A. You know something? I'm not sure. It kind of seems like something just happened and just started mushrooming and mushrooming. And maybe they didn't know.

Q. If something fraudulent happened there -- or do you have an opinion?

A. I don't know.

Q. If you have an opinion, tell me --

A. I don't know if it was something fraudulent.

Q. I'm sorry?

A. I don't know if it was something fraudulent.

Q. **[THE COURT]** Mr. Stricklin?

A. **[MR. STRICKLIN]** With that answer, I have nothing, Your Honor.

Q. Thank you, ma'am.

Number 104. Thank you for your patience. We'll try to be expeditious. There are no right or wrong answers.

(SEALED PORTION BY ORDER OF THE COURT)

**[263]**

Q. **[THE COURT]** Okay. There was a question

**[264]**

about what, in your opinion, caused the collapse of Enron, and you list greed. And as a follow-up, you said, "Corporate execs got rich. Employees and investors lost much." What do you base that on?

A. **[JUROR 104]** What I've read.

Q. What have you read?

A. Well, it's just redundant in the paper, but my --

Q. From here on out, the record will be unsealed. Go ahead. I'm sorry.

A. It appears to me that you don't rise to the positions these men have arisen to if they're stupid. So they had to know what was going on. And while I don't believe that CEOs micro manage multi-million-dollar corporations, I don't think this is a micro managed situation.

So I just feel like this is a board room situation, not a mail room situation. So he had -- they had to know what was going on. I don't see that there was any possibility that they didn't.

Q. So you answered later in response to Question 71 that you think that they are guilty and, if nothing else, they are guilty of ignorance when they should have and were in positions to know. Ignorance usually doesn't result in such huge compensations, and -- but then

**[265]**

in the next question, which asked you would any opinion you may have formed regarding Enron and the defendants prevent you from impartially considering the evidence during trial, you said no. And I am trying to harmonize those two answers.

A. Okay. Well, the only way I can harmonize that is we're talking about law, not ethics or morals. I think there's a big difference. And while it's hard to put your morals and ethics aside, I think I can abide by law. I don't know. I'm not in a position to know what particularly is the law regarding these companies that are formed just to submit loss.

Q. If I instruct you on the law, will you follow my instructions on the law?

A. Oh, yes.

Q. If I instruct you that you are to base your decisions solely on the evidence in this trial and not on any impressions you may have heard or read, can you follow that instruction?

A. Yes.

Q. Well, you hesitated a little bit. We're not trying to --

A. I know. I know.

Q. We're really trying to get people who can be candid. There are no right or wrong answers.

**[266]**

A. I'll put it this way. I would be very upset with the government if they could not prove their case.

Q. All right. If they didn't prove their case, would you nevertheless find the defendants guilty?

A. If they didn't prove their case, there would be no choice.

Q. But what?

A. But to find them innocent.

Q. All right.

A. Or not necessarily innocent but not guilty as charged.

Q. Are you going to start out assuming that they're guilty?

A. No, I don't think so.

Q. Are you going to start out assuming that they're not guilty?

A. I think I'm going to start out questioning it.

Q. Questioning what?

A. Their innocence.

Q. Are you going to -- are you going to require the government to prove that they may be guilty or guilty beyond a reasonable doubt?

**[267]**

A. Well, as I understand a reasonable doubt versus all possible doubt, I guess I'm looking for a reasonable doubt, what would be reasonable to assume that they knew or didn't know.

Q. If you have a reasonable doubt, will you find the defendants not guilty?

A. If I have a reasonable doubt, yes.

Q. How much -- you read an awful lot of publications here. Do you read the "Chronicle" daily?

A. Yeah, I scan it daily.

Q. Have you -- do you recall any particular articles you have read about Enron?

A. Well, I've read the paper this week.

Q. All those articles this weekend?

A. Yeah. They're redundant.

Q. What impressions have you drawn from those articles?

A. No new impressions.

Q. What old impressions have been solidified?

A. I've already kind of explained that. I feel like they should have known. There was enough information for them to know. I've read Sherron Watkins' e-mail. It's online. I've read it. I didn't write that down because I just read it recently.

**[268]**

Q. And what have you seen on television?

A. I don't watch television. If something is on, I catch it; but I don't normally listen to the news.

Q. Mr. Stricklin, do you have any questions?

A. **[MR. STRICKLIN]** No, Your Honor. Thank you.

Q. **[JUROR 104]** I have one comment.

A. **[THE COURT]** Okay.

A. On my last one, you asked if it would be a hardship. It would be a hardship because I have an 88-year-old mother-in-law that I spend two days a week with and an 82-year-old father that I spend three days, at least, a week with. My whole life is tied up with my parents.

Q. We will take that into consideration. Thank you.

A. Okay.

Q. You may return to your seat.

Any challenges for cause?

A. **[MR. PETROCELLI]** She's caused based on your questioning and everything she said. Including, "I don't see there's any possibility that they didn't know, and I would be very upset if the government didn't prove their case."

**[269]**

Q. **[MR. STRICKLIN]** Your Honor, I think --

A. It's crystal clear.

Q. She said she would be upset if the government didn't prove their case. She also said that if they didn't she would have no choice but to find them not guilty.

A. **[THE COURT]** I have to gauge the demeanor, all the answers she gave me. She persuaded me that she could not be fair and impartial, so she's excused.

Number 112.

A. **[MR. PETROCELLI]** Judge, this might be.

Q. Yes. I know. I know.

How do you do, sir? Thank you for your patience.

A. **[JUROR 112]** Okay.

Q. **[THE COURT]** We just have a few questions for you based on your questionnaire. You indicated that -- when asked about friends who worked for Arthur Andersen, that you knew these people. And I don't know -- who is that person?

A. He's a friend of mine that I work with.

Q. Do you know what he did for Arthur Andersen?

A. He was one of their accountants, I believe.

**[270]**

Q. Do you know if he worked on the Enron account?

A. I do not.

Q. And then when you were asked about friends who worked for Enron, you said, "Friend and other co-workers"?

A. Right.

Q. Would you tell me who these people were?

A. There's various people that -- the firm that I work for that had Enron employees that were Arthur Andersen employees.

Q. And you work for Deloitte?

A. Correct.

Q. Can you give us any particular names?

A. Ron Clark. We have a few people from Arthur Andersen. None of them come to my mind right now.

Q. You said some of these people lost their -- lost their income from the fall of Enron. Do you know any particular people who lost money?

A. Some of the administrative staff for Enron. One of my neighbors was an Enron employee who had no income and lost their house, moved back to, I believe, South Carolina with her family.

**[271]**

Q. And how has that affected you?

A. I mean, a lot of people have had hardships from it directly impacting me. It's just something I saw.

Q Would that prevent you from being a fair and impartial juror in this case?

A. I would think I could be. I would think I could be.

Q. In response to questions about the collapse of Enron, you said, "Corporations continue to pad their executive pockets at any cost, and our current administrative aids, by having their hands in for money." And then you base that on reading and what is out in the general public. Can you expand on that a little bit? What do you actually think?

A.: I think corporations are pocketing their bank accounts. Our current administration -- I mean, just reading, learning and listening to what our current administration does, tax cuts for corporations and various things, I don't see how that actually helps the general population. I think it actually separates us much more.

Q. Does that tend to make you think Mr. Lay or Mr. Skilling must be guilty?

A. I would say based on what I've read and heard to this point.

**[272]**

Q. **[MR. PETROCELLI]** We don't have an objection.

A. **[JUROR 112]** I would say.

A. **[MR. STRICKLIN]** I don't have any more questions if you're satisfied.

Q. **[THE COURT]** Then you could be fair?

A. **[JUROR 112]** I think I could be.

A. Thank you, sir.

A. **[MR. PETROCELLI]** He's agreeing to exclude him from the pool with Your Honor's permission.

Q. **[THE COURT]** Is that agreeable to the defense?

A. Yes.

A. **[MR. RAMSEY]** Speak up.

A. **[MR. PETROCELLI]** To strike him.

A. Okay.

A. **[MR. STRICKLIN]** We agree, Your Honor.

Q. **[THE COURT]** Okay. All right. Number 113. I'm sure this will be the start of a new round of agreements with defense counsel.

A. **[MR. PETROCELLI]** We're getting closer.

Q. Thank you for your patience. We'll move this along quickly. We just have a few questions for you. You said, "The law firm I work for had to write off a large amount of legal fees when Enron went bankrupt." Did that affect you personally?

A. **[JUROR 113]** No. No. And I asked about that. I

**[273]**

had to go to my accounting manager and ask if it had affected us.

Q. **[THE COURT]** I know Bracewell did a lot of work for Enron. Have you talked to any of the people there about this case?

A. No.

Q. Did you work with people who did work for Enron?

A. No. I don't have any -- really any interaction with any lawyers that I worked for.

Q. You have down here in response to Question 41, which asked you about impressions from the media, "Co-worker was in the jury pool for Mrs. Fastow's trial. I watch Fox and Friends in the morning and Brit Hume in the evening. The original story was so long that I don't remember a lot about it."

A. I know I've heard a lot about it. I just don't -- it didn't directly affect me, so I didn't really retain much of what was in the news at the time.

Q. Do you regularly read the "Houston Chronicle"?

A. No. I do not.

Q. Do you regularly watch any news programs?

A. I watch Fox and Friends in the morning,

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and I watch Brit Hume in the evening.

Q. Do you -- I also watch Fox and Friends. I haven't seen much mention in this case.

A. Not recently.

Q. Is there anything else you have seen elsewhere that leaves an impression about this case?

A. To be honest with you, sir, no. Because it never really affected me, so I never really paid that much attention about it.

Q. Okay. Johnny, don't put in the record that I watch Fox and Friends.

A. Sorry.

Q. The other networks will print that.

A. **[MR. PETROCELLI]** They will. They will.

Q. **[THE COURT]** Is there anything based on what you've heard or read about this case that leads you to think that these defendants are guilty of anything?

A. **[JUROR 113]** I can't make a determination, sir. I really have not paid that close of attention. I haven't read any of the books. I haven't -- I have not -- I know a friend at work was saying that she was reading one of the books that has recently come out about it. I said, "Well, I don't want to hear about it." And I haven't seen any of the movies. I have really honestly not formed an opinion.

Q. If you are selected, can you base

**[275]**

your decision only on the evidence in this case?

A. Absolutely.

A. **[MR. PETROCELLI]** Nothing.

A. **[MR. STRICKLIN]** Nothing.

Q. **[THE COURT]** Thank you very much.

Juror Number 116. Thank you for your patience, sir. We're just about through. We have a couple of questions based on your questionnaire. In one question, we said, "Has anyone close to you ever had a negative experience dealing with law enforcement officers?"

You said, "No, but I have a growing mistrust." Can you tell us a little bit about that?

A. **[JUROR 116]** I guess the concern is primarily around the last four years, given all the changes in the world with terrorism and all. And you'll notice some of my people I put down as the least admired kind of centered around concerns for erosion of liberty and freedom.

Q. You least admire Ashcroft, Rumsfeld and Bin Ladin. Is your concern with fighting terrorism that the government hasn't done a good job in that field?

A. Yes and no. Yes and no, they haven't done a good job. But I'm also concerned about potentially the erosion or where the ball is going or the past in terms of our liberty and freedom.

Q. Do you think the government may be

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suppressing civil liberties?

A. Or it hasn't affected me personally, but I guess I'm concerned where it's headed.

Q. Does that concern have any affect on your decisions about this case?

A. No. No.

Q. Do you think the government in this case has done something improper?

A. Not that I'm aware of, no. No. I disconnect both. That's a separate issue.

Q. I understand. Don't take offense. We're just following up. We want to be sure we understand your answers. There are no right or wrong answers to any of this.

In response to Question 36, you said, "A human resource professional who is responsible for a plant in La Porte lost money." Is that a close personal friend?

A. No. Just an acquaintance. We belong to a human resource group over there where different HR managers belong to the same group. And I was aware of her, but I don't know her personally, no.

Q. Do you know how much she lost?

A. No.

Q. Is there anything about that experience that would prevent you from being fair and

**[277]**

impartial?

A. No. No.

Q. How often do you read the "Chronicle"?

A. Daily.

Q. Do you read the whole newspaper?

A. No. I don't have time.

Q. What sections do you read?

A. Usually I try to get the first section, the front page, the business section to a degree.

Q. There's been a lot of coverage in the "Chronicle" about this case.

A. Yes.

Q. Have you read all those stories?

A. No. No.

Q. Have you read any of them?

A. Yes.

Q. Which ones do you remember?

A. To be honest, I was thinking about that over the weekend. Over the last four years, I can remember reading a number of different articles just like you do different news articles. But since it hasn't affected me personally, I can't tell you I can specifically recall any one of them other than to be aware of the situation.

Q. Have you formed any impressions

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about the guilt or innocence of Mr. Lay or Mr. Skilling?

A. No. No.

Q. What TV news programs do you normally watch?

A. TV news? Generally if I get home in time in the evening, I try to watch the local news, perhaps the national news. But generally it's after that, so usually I listen to NPR on the way home.

Q. All right. I've heard a few discussions on NPR about the case and discussions on the coin toss. Do you recall listening to any articles on NPR, any of the programs?

A. Not specifically. I couldn't quote one to say, "I can remember on Tuesday night."

Q. Based on what you heard and listened about the case, do you have any impressions about this case?

A. In all honesty, no. No, not negative or positive. Just that it's an event that happened.

Q. Can you base your decision solely on the evidence that the government admits during this trial?

A. Yes.

A. **[MR. PETROCELLI]** Nothing.

A. **[MR. RAMSEY]** Nothing, Your Honor.

**[279]**

Q. **[MR. STRICKLIN]** Just one area, about the growing mistrust of government. Obviously, I work for the government, so it's a little bit of a concern. This is a different issue, it sounds like. Because many people are concerned about these cutting edge issues that you brought up. In this case, there may be evidence that lots of documents were seized by FBI agents or IRS agents and from corporations.

Is that the kind of thing we're talking about, erosion of liberties that you're referring to? Would that conjure up in your mind a picture of an oppressive type of government?

A. **[JUROR 116]** What you're mentioning there, no. I'm not real familiar with the laws and the legalities and how you do that, but that's not really a concern. More of my concern is the -- I guess holding people without trial and those kind of issues.

Q. We're getting ready for trial. That's for sure.

A. But, I mean, more the international work where people are put in Cuba, that type of concern.

Q. There's also a concern that lots of e-mails, for lack of a better word, were seized in this case. Is that kind of a concern, too, that might cause you to think that the government is prying if we

**[280]**

bring to you e-mails from inside people's computers from the corporation?

A. Most likely not. In my job, I wrote a policy on that in terms of anything you put in the e-mail is company property.

Q. There you go.

A. So that's not a concern in my case.

Q. Thank you, sir.

A. Thank you.

Q. **[THE COURT]** Let me find out where we are on challenges for cause. I think I've gone down through 33. Is there any challenge for cause?

A. **[MR. STRICKLIN]** What number? I'm sorry.

Q. I think I've gone through --

A. **[MR. PETROCELLI]** 116.

Q. **[THE COURT]** Wait a minute. No. But -- are there any challenges for cause to Number 96, 99 or 101?

A. 101, based on her questionnaires. It is pretty decidedly negative. She said that the guys are guilty. She said she would have a hard time, as I understood her testimony, Your Honor.

Q. **[MR. STRICKLIN]** We object, Your Honor. She said to every question here that she can be fair.

A. **[MR. PETROCELLI]** She also works through the night.

**[281]**

Q. **[THE COURT]** I know. I think she can be fair. She also has had a husband that helps support. Motion is denied and request for additional peremptory is denied.

How about 113?

A. No.

Q. 116 that we just talked to?

A. No.

Q. We're down to 37 people.

A. One more.

Q. Number 118. How do you do, sir? Thank you for your patience?

A. **[JUROR 118]** Uh-huh.

Q. **[THE COURT]** We have a few questions. You indicate that -- in response to a question, "Do you have an opinion about the cause of Enron collapse" -- you said, "Upper management greed."

Can you tell me -- and you base that on news reports. Can you tell me what you mean by that?

A. That's -- I haven't read all that much about it and really care about it, but that's what's been portrayed in the news, basically, is what it's come down at. So I'm just going on what I had heard from them.

Q. And you read that -- you read the "Houston Chronicle" and you listen to KTRH radio news?

A. Yes, sir.

**[282]**

Q. Do you understand that if you were selected as a juror you will base your decision on the evidence in this Court?

A. Oh, yes, sir.

Q. Do you think that Mr. Lay or Mr. Skilling are guilty of something?

A. No.

Q. Do you think that because they earn large salaries that they must have done something wrong?

A. No. I think they did something right to earn a large salary. They obviously worked for it. But honestly, you know, I think that that answer was wrong. I don't think -- I don't know what caused the collapse of Enron. I really don't.

Q. Do you read the "Chronicle" daily?

A. No.

Q. How often do you read it?

A. I read it at least once a week or so. I mean, different parts of it. But not every day, no.

Q. Did you read the news media, the coverage in the "Chronicle" in the last 8 or 10 days?

A. Yes, sir, I did.

Q. What do you recall about that?

A. I thought it was very fair. I mean, they didn't say they were guilty. They didn't -- it was --

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I thought they were very fair in their article.

Q. Did you form any impression, based on reading those articles, that Mr. Lay or Skilling are guilty?

A. No, not on their guilt. I thought that it kind of humanized them. But it said what they were being tried for, the charges, and it didn't say they were guilty, didn't say they were not guilty. It just basically laid out what had to happen, what they're being charged on. That's what I went with.

Q. And what have you heard on the radio about the case?

A. Just everybody is listening. That's basically all. It's a worldwide attention.

Q. Do you have any questions?

A. **[MR. PETROCELLI]** I don't.

Q. **[MR. STRICKLIN]** Sir, I have a question for you. Do you have any lawsuits pending right now?

A. **[JUROR 118]** No.

Q. Okay. You're not a plaintiff in any manner?

A. No, sir.

Q. Have you ever been?

A. No.

Q. Okay. That's all I wanted to

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know.

A. **[THE COURT]** Thank you, sir.

All right. He is as I count --

A. **[MR. PETROCELLI]** 38.

Q. He's Number 38. Do you want to question one more person, or do you want to stop?

A. I'm fine.

Q. What?

A. No.

Q. Are there any challenges for cause? I've ruled on all your challenges.

A. **[MR. RAMSEY]** I think you've already ruled.

Q. **[MR. PETROCELLI]** Can I ask you to revisit one.

Q. **[THE COURT]** Which one?

A. That one that you said Mr. Ramsey rehabilitated, that you were convinced should be excused.

Q. I didn't say I was convinced he should be excused.

A. Well, you were leaning in that direction.

Q. You don't know how to read me, Mr. Petrocelli.

A. Your question was so bad, Judge, Number 28.

**[285]**

A. No. I've ruled.

A. Okay.

Q. **[MR. STRICKLIN]** How about Sheila Kahanek's friend?

A. **[THE COURT]** I've ruled on that, too.

Q. **[MR. RAMSEY]** I'm told by the people that are listening in out here that I failed to move for an additional peremptory on 74.

Q. That's denied.

Do you-all agree that we now have 38 people and we have enough to strike?

A. We do, Your Honor.

A. **[MR. PETROCELLI]** Yes, Your Honor. We totally forget to ask for an additional peremptory when you denied our challenge for 74.

Q. **[MR. RAMSEY]** That's what you just did.

A **[THE COURT]** That's what he just did.

Q. **[MR. STRICKLIN]** Your Honor, to ensure that we adhere to the constitutional requirements, can we switch lists after we fill them out so we see who our strikes are before we turn them into the Court?

A. **[MR. PETROCELLI]** No.

Q. **[THE COURT]** You'll know by seeing who is on the panel.

A. **[MR. STRICKLIN]** That's right, Your Honor. By

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that time, it will be too late to raise a Batson challenge, in order to occur. In order to raise a Batson challenge, we need to know ahead of time to see who their strikes are, to see if they have used any form of prima facie case.

Q. The way I do it in my court, you look at the jury panel and I bring you to the bench and I say, "Are there any objections to the panel as constituted," before I swear them in. Once they're sworn in, it's too late to make a Batson challenge. But that's why I bring you to the bench for that --

A. At the bench, we'll be able to see --

Q. No. But you know -- you know the 38 people.

A. Right.

Q. You know the six that you're going to strike and the two alternates. You don't have to be a rocket scientist to figure out that the people who aren't on the jury were struck by the defense.

A. All right. That will work.

Q. **[MR. PETROCELLI]** How much time do we get?

Q **[THE COURT]** How much time do you need?

A. **[MR. RAMSEY]** We do need a little time.

A. **[MR. PETROCELLI]** Half-hour.

A. **[THE COURT]** Fine.

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A. **[CASE MANAGER]** Judge, the government has 6. The defense has 12.

(The following was had before the jury panel)

**[THE COURT]** All right, we are just about through. We have questioned enough potential jurors to proceed with jury selection. So we will not be having questions at the bench of any other potential jurors. We're going to take a 30-minute recess, and during that recess each side will confer and make their challenges for cause.

We will select 12 regular jurors. The government will get six peremptory challenges. The defendants will get 12 peremptory challenges. Defense counsel may confer. We will select four alternate jurors. The government will get two peremptory challenges, and the defense will get a total of two peremptory challenges. They may confer on those.

So the lawyers know the 38 people who are now available. You should exercise your strikes from among those 38 people, of course. I've answered questions at the bench. Are there any questions by counsel about the process? I take it by your silence there are not.

It's 4:00 o'clock. At 4:30 we will bring back in all the potential jurors. They will be seated in here. Well, at 4:40, we will bring them back in. Your

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strikes will be due in 30 minutes, and then we will announce the jury. We stand in recess.

(A recess was had at 4:01 p.m.)

Q. **[THE COURT]** Let me talk to counsel about a couple of things while we're -- you don't need to come up here, but just come closer.

We received an emergency motion of Sheila McNulty from exemption from sequestration order. It says the government and Mr. Ramsey is not opposed.

Is there any problem with that?

A. **[MR. RAMSEY]** That's not quite correct about Mr. Ramsey, Your Honor. I have not made a decision yet.

Q. All right.

A. I have told the gentleman that I would have to consult with Mr. Petrocelli.

Q. Let me know. Certainly she can sit in during opening argument tomorrow.

A. Yes.

A. **[MR. PETROCELLI]** I already indicated that to her, Judge. So we have no problem with that.

Q. **[THE COURT]** We'll discuss it tomorrow afternoon.

One other matter I told you earlier -- I gave you a deadline for when the charge would be submitted for each other and to me. That was before I heard the

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government's revised estimate about the length of the trial.

In thinking about that, it didn't give me any time. It gave you too much time and me no time. So I want to revise that. So listen to these dates.

The government will submit its proposed charge to defense counsel by February 17th. Defense will submit its proposed charge by March 3rd. You will meet and greet by March 17th. And you will submit to the Court the charge in the form I described last week by March 31st.

With the ample talent each of you has -- and I'm sure each of you have already done the charge anyway -- that will give you enough time. That will give me more time. There is many more of you than me to work on that.

A. You're managing to keep up, though, Judge.

A. No, I'm not.

Let me talk to the jury a second.

In just a moment we're going to announce those of you who are selected to serve as jurors. Obviously, we could not have selected the jury we have without the patience and cooperation of all of you. I know many of you have been thinking about this for several months since you completed the questionnaires. I know that

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you've been worried about whether you will serve or not serve and how you can make plans for your future.

All of you, whether or not you have been selected, have provided a valuable service to our system of justice merely by your participation. Obviously, we could not have selected the jury we have without the patience and cooperation of all of you. So the lawyers and the parties and I appreciate very much your patience, your cooperation, and your timely arrival this morning.

When Ms. Carr calls your number, please come forward and have a seat in the jury box.

**[CASE MANAGER]** Juror Number 10. Juror Number 11. Juror Number 13. Juror Number 20. Juror Number 38. Juror Number 50. Juror Number 63. Juror Number 64. Juror Number 67. Juror Number 78. Juror Number 84. Juror Number 87. Juror Number 90. Juror Number 99. Juror Number 113. And Juror Number 116.

Q. **[THE COURT]** Will counsel please approach the bench.

(The following was had at the bench)

Q. **[THE COURT]** Is there any objection to the jury as constituted?

(Portion sealed by order of the Court)

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Q. **[THE COURT]** Did you have any objections?

A. **[MR. STRICKLIN]** No objection. We're pleased with the jury, Your Honor.

Q. No Batson challenges?

A. No Batson challenges.

Q. Okay. Have a seat.

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A. **[MR. SECREST]** Thank you, Judge.

**[THE COURT]** Ladies and gentlemen, please stand and take your oath as jurors.

Q. **[CASE MANAGER]** Please raise your right hand.

You and each of you do solemnly swear that in the case now before the Court you will render a true verdict according to the law and the evidence, so help you God?

A. **[JURY]** (Answered affirmatively).

**[THE COURT]** Thank you. Please be seated.

Let me give you some instructions that apply to your service as jurors. They are few in number, but they are very important; so please listen carefully.

During this trial, you are not to discuss this case with anyone or allow anyone to discuss it with you until you have reached a verdict. Once you have reached a verdict, it will be up to you to talk to whomever you want about the case. If you decide you do not want to talk to anyone about the case after you have reached a verdict, that will be your decision. But during this trial, do not talk to anyone about the case and do not allow anyone to talk to you.

When you are in the elevator lobbies or the first-floor lobby, entering or exiting the building, you will probably see lawyers or parties or witnesses. Do your

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best to disassociate yourself with other people whom you see in this courtroom.

You may be in an elevator, and you may see one of the lawyers start to get in and back out. The lawyers are not being unfriendly. They're merely trying to be sure that there could be no claim of impropriety. So I would like you to be equally as guarded in your avoiding anybody that appears to have anything to do with this case. So if you happen to get into an elevator and see a lawyer in the elevator or a party, it's perfectly appropriate for you to back out. Nobody is trying to be unfriendly. We just want to be sure that there's no question ever raised about any improper conduct by anyone.

When you get home tonight, I'm sure your friends or family members are going to ask you what happened, and you're going to tell them you were selected for this jury. And I'm sure they're going to ask you questions about it. And as you hear evidence in the case, you may feel that you want to talk to your friends and family members. That would be totally inappropriate. And you should not do that.

I want to excuse the rest of you now before I proceed any further. I've already thanked you, and you should now return to the sixth floor.

**[CASE MANAGER]** They're free to go.

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**[THE COURT]** Oh, you're free to go. I'm told you're free to go. You're welcome to stay, but you're free to go.

All right, ladies and gentlemen, if you'll look up here. As I said, it's natural -- once you start hearing the evidence, it's natural for your friends and family members, who may be listening and hearing about the case in the media, to give you their input. It is not appropriate for anyone to give you input about this case. You will have heard the evidence. You will have judged the demeanor of the witnesses. So you should not listen to anyone else as to what he or she may think about the case because they haven't been here in court. They haven't been through the process of jury selection, and we don't know anything about their ability to fairly and impartialy judge anything.

So throughout this trial, I suggest to you that, when some friend or coworker or family member may attempt to give you his or her opinion, you should say, "The Judge told me I cannot listen to you or talk to you."

Several years ago, my wife was on a jury in Judge Werlein's court. Of course, when she came home, I asked her all about the case.
She told me, "Well, when the trial is over, if you'll take me out to dinner, I'll tell you all

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about it." That seemed to work well, so I'm not suggesting that. But it worked well in our family, and you may want to consider that.

Secondly, do not do any independent investigation or search about this case. It is the government's job to prove the defendants guilty beyond a reasonable doubt. If the government fails to meet that burden, it is your job to acquit the defendants. So do not do any research or investigation about the case. And, finally, and perhaps most importantly, there will undoubtedly be a substantial amount of media attention devoted to this case.

I instruct you that for the duration of this trial, you should not read anything dealing with this case or listen to any discussion of the case on radio or television or access any Internet sites that may deal with the case.

I also request that you inform your friends and family members that they should not discuss with you anything they may have read or heard about this case.

The parties and the Court have placed substantial confidence in your ability to reach a fair and impartial verdict in this case based solely on the evidence you hear and read in this courtroom.

You have been through a rigorous selection

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process, both through the extensive written questionnaires, questions by the Court and counsel today, and through the parties' exercise of their peremptory challenges.

You will be the judges of the facts of this case. Your role in judging the facts is more important than my role in ruling on questions of law. Therefore, each of you needs to be absolutely sure that your decisions concerning the facts will be based only on the evidence that you hear and read in this courtroom.

No matter how conscientious a reporter may be, there is no way that a particular article or news program can include even a fraction of the evidence that you will hear in this trial. Reporters necessarily operate under time constraints and page limitations, and they have to be selective with what they can report. That process means that parts -- and sometimes the most important parts of the evidence that you may find persuasive -- may be omitted from an article or from a news program, or that a witness may only be quoted in part in an article or news program, or that a reporter may impart his or her own views and opinions and inferences as to what the witness said.

It is your job to judge the credibility or believability of what each witness says and how important that witness' testimony is in your estimation. It would not be proper for you to consider the opinions of the media

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in discharging that obligation.

Moreover, sometimes the media may quote a lawyer or a witness who says something out of court about the case, and that might be reported in the radio, television or newspapers. Although, of course, everyone has a First Amendment right to speak to the media, you should never consider out-of-court statements made by witnesses or lawyers.

Sometimes people make statements out of court because they know that the Judge would not permit those statements to be made in court. So you should always be very skeptical about the motives people may have for making out-of-court statements. You should base your decisions only on the evidence you hear in this courtroom, and I trust that all of you will conscientiously do so.

I remind you again of the other instructions I gave you at the beginning of the trial. Each defendant is presumed to be innocent. The indictment is not evidence of wrongdoing or any guilt. The government has the burden to prove the defendants guilty beyond a reasonable doubt. And if the government fails to do so, you must acquit the defendants. Finally, the defendants have no obligation to disprove the charges or present any evidence or testify.

Now, let me tell you a little bit about our schedule. We begin promptly at 8:30 in the morning. We

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generally recess around 5:00 o'clock, give or take a few minutes, depending on a logical break point in the trial.

If you are not familiar with downtown Houston traffic in the morning, at least for tomorrow morning, please try to arrive early enough so that you give yourself some leeway in case there should be some traffic congestion or some other problem.

Before you leave, I'm going to have Ms. Carr take you downstairs to the jury room in Courtroom 9(b). That's where you will arrive in the morning. You will always arrive in the jury room. We will always bring you into court. You will find on the table in the jury room an official juror badge. You can discard these paper badges or keep them as mementoes, whatever you prefer.

The official badge has my name and the Court's phone number on it. If some emergency should arise this evening or tomorrow morning and you realize that you cannot be here by 8:30, please call us and let us know so that we will know what the situation is. And, again, we cannot start in the morning unless all 16 of you are here. So certainly for the next few days, please leave home early enough so that you can be here on time. The lawyers know that we attempt to start on time. But obviously, unless you all are here, we cannot do so.

We will have brought to you in the morning

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in the jury room doughnuts or muffins. There is a coffee pot in the jury room. The first juror to arrive in the morning, if he or she drinks coffee, they should make a pot of coffee. We have a refrigerator and a microwave if you would like to bring your lunch. We have a variety of muffins that are provided. The banana nut muffins go fairly quickly. There's a medicinally tasting cranberry muffin which is never eaten. So if you want a selection on what pastries to eat in the morning, arrive early.

We're doing everything we can to make this experience, if not even enjoyable, at least friendly and efficient. And I want to at this point thank all the people who helped out today. We've had people all weekend from the marshal's office, the court security office, the deputy clerks to be sure that everything went as smoothly as it did today. And I thank them.

And again, in just a moment, we will take you out that door, we will take you down to Courtroom 9(b) and to the jury room. You will get your badge. You will be free to go. The Court security officers will escort you out as they did this morning. And tomorrow morning you will hear the opening statements. The government will make its opening statement. At the end of the government's opening statement, the defense lawyers will make their opening statement. The evidence will begin Wednesday.

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Q. Are there any other questions? Yes, ma'am?

A. **[JUROR]** Any special permission sticker for the HOV?

Q. Pardon me?

A. Any special permission to get on the HOV?

Q. If you will see the Clerk's Office, we'll see what we can do. We'll see if we can get you a pass or at least reimburse you for a pass. You are reimbursed for legitimate travel expenses. Now, you can't go out and buy a Lexus and claim it was necessary for this trial, but we'll be reasonable with you.

A. Okay.

**[THE COURT]** All right. I look forward to working with all of you. I appreciate your patience. I think at the end of this trial you will find that this has been a very rewarding experience. And it's certainly an important experience, and you're certainly filling an important role for the citizens of this country and the parties in this case. Thank you. You're excused until tomorrow morning.

(Jury retires for the evening)

Q. Are there any questions about tomorrow's schedule or anything else we need to talk about?

Q. **[MR. BERKOWITZ]** Your Honor, is there going to

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be any access to the courtroom earlier in the morning for setup?

A. **[THE COURT]** Your people were down here Friday getting organized. We checked everything out.

A. I know there were some sound issues. They asked me what's the earliest we can get in there to set up on Tuesday.

Q. Would 7:30 be okay?

A. I assume so. Thank you.

Q. We've reconfigured the tables. We've got little extra tables in there. I think we've accommodated everybody's current desire.

A. We look forward to seeing it.

Q. Any questions from defense counsel? All right. We'll see you all --

Q. **[MR. LARSON]** If I could, Joe Larson. I'm here on behalf of Sheila McNulty who is a reporter from the Financial Times. I filed an emergency motion. She's one of the government witnesses.

A. **[THE COURT]** Yes. We already talked about it.

A. I was not in the courtroom.

A Well, I can't help that.

Q. Can you tell me how the Court ruled?

A. She's welcome to sit through

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opening statements tomorrow, and we'll take it up tomorrow afternoon as to whether she can be excused from the rule. The lawyers said they wanted some more time to consider it.

A. Thank you Judge.

Q. She can certainly be here tomorrow. So you really need to talk to the lawyers more than me at this point.

A. Thank you, Judge. And I've been trying to work that out with them. I appreciate that, and I'll pass that on.

Q. I think we'll probably be able to work something out.

A. Thank you, Judge.

Q. Thank you. You're excused until tomorrow morning.

(A recess was had at 5:05 p.m.)

## COURT REPORTER'S CERTIFICATE

I, Johnny C. Sanchez, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

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IN THE

# Supreme Court of the United States

JEFFREY K. SKILLING,
*Petitioner*,

v.

UNITED STATES OF AMERICA,
*Respondent*.

**On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

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# APPENDIX Q

# EXCERPTS FROM TRIAL TRANSCRIPT

## Opening Argument by Mr. Hueston

**[346]**

Thank you, Your Honor. The United States in this case will take you inside the doors of what was once the seventh largest corporation in this country, Enron. In the year before Enron declared bankruptcy, two men at the helm of the company told lie after lie about the true financial condition of Enron, lies that propped up the value of their own stock holdings and lies that deprived the common investors of information that they needed to make fully informed decisions about their own Enron stock.

You will see that Defendants Lay and

**[347]**

Skilling knew key facts about the true condition of Enron, facts that the investing public did not know. With that information, Defendants Lay and Skilling sold tens of millions of dollars of their own Enron stock.

The victims in this case, the investing public, the employees, those who did not have that information, those who were not able to sell their stock before Enron entered bankruptcy were not as fortunate as these two men. These men are Defendants Ken Lay and Jeffrey Skilling.

* * *

But inside the doors of Enron, something was

**[348]**

terribly wrong. In mid-August, 2001, Jeff Skilling is about to make a shocking announcement: He is resigning as Chief Executive Officer after just six months on the job. The evidence will show that as he leaves Enron he knows that there are billions of dollars of problems at Enron; and despite this, he falsely assures the investing public that there are no problems at Enron. The evidence will show that weeks later he sold millions of dollars of Enron stock and later lied about his reasons for doing so to the Securities and Exchange Commission.

* * *

**[352]**

When an investor buys a share of stock, an investor buys some rights in a publicly-traded company. When an investor buys a share of stock, they buy the right to trust the Chief Financial Officer, the right to expect that that Chief Financial Officer will remain loyal to their interests as stockholders. They buy the right to hear and to receive truth from that Chief Executive Officer. And importantly, they buy the right to have their interests placed ahead of the Chief Executive Officers every day of the week.

You will hear that Defendants Lay and Skilling willingly Chose to take on those duties and responsibilities, and they were paid handsomely to take those duties and responsibilities. You will hear that from 1999 through 2001 Jeff Skilling was paid in compensation and benefits over $150

**[353]**

million; and for Defendant Lay, he was paid over $220 million. Special compensation for a special duty.

Ladies and gentlemen, for a time in 1999 and 2000, Enron stock seemed to defy gravity. Up and up and up it went. One of the important components of these two men's compensation was their stock; and as the stock price went up, these Defendants got richer and richer. But by early 2001, the stock price began to go down.

You will hear that employees and investors were on the edge of their seats. They were wondering what is happening in Enron, what should I do with my Enron stock. They looked for clear and truthful guidance from these two men; and you will see at this trial, ladies and gentlemen, that these two men chose to violate their duties of loyalty and trust by lying over and over again about the true financial condition of Enron, concealing from those employees and investors information which was critical for them to make good decisions about what to do with their own stock; and at the same time, they repeatedly put their own interests in front of those investors by self-dealing, by selling their own stock, and by taking careful measures to ensure that the public did not find out about it right away.

* * *

**[379]**

Employees, they will tell you, were counseled at Enron by Defendant Lay and others that at Enron there's a duty of honesty and candor; that communication, open and fair and honest communication, was a core value at Enron. They expected their Chief Executive Officer to give them unvarnished truth, to give them guidance, to put their interests first.

* * *

**[389]**

Choices, ladies and gentlemen, both with what to say and what to do with his finances. The point, ladies and gentlemen, Defendant Lay, each time he made a decision to sell Enron stock, had the full benefit of information that he knew the common investor did not have, key information that the common investor didn't have so that they could make their own good choices about their stock, putting himself in front of the investors' interest.

We're now into November, 2001. Things are increasingly grim now for Enron. Defendant Lay tells the employees they must be prepared to sacrifice. You will see a couple of e-mails. On November 19th he writes to his employees, "The goal of this process is to focus our resources on those opportunities that will produce near-term cash and earnings. Regrettably, that will require reductions in our work force." He was calling for layoffs to generate some near-term cash to pay the bills of Enron. On that same date, you will hear that he canceled the all-employee party that was supposed to be held at the then

**[390]**

named Enron field, home of the Houston Astros. He wrote to employees that day, "Given what has transpired over the last month, it could be considered imprudent for Enron to incur the expense for such an event."

Sacrifice, ladies and gentlemen, for the employees. But you will see that Defendant Lay wasn't prepared to sacrifice himself. Eight days later, Enron is right on the verge of bankruptcy. The cash in the till is just about down to zero.

You will hear that at that time Defendant Lay maxed out his line of credit at Enron, took the last million dollars out, put it into his account, and paid off his home mortgage and never repaid it. Lay over and over again put his own interests ahead of investors. So, too, did Skilling.

Let me give you one example. You will hear that, when Skilling left in mid-August, the evidence will show that he left knowing there were billions of dollars of problems at Enron. Let me show you a time line. After he left, just three weeks later, with that knowledge in his head, he tried to sell 200,000 shares of Enron stock. That would have netted him $6 million.

The only thing that stopped him? He didn't have the right Enron paperwork to make the sale. And so, he held up the sale to get the paperwork. Only the paperwork didn't come back in time before the events of 9-11. The very

**[391]**

next day that the market opened after 9-11, on September 17th, you will hear that Skilling upped the order from 200,000 shares to 500,000 shares -- that was over half his remaining stock holdings in Enron -- netting him $15 million.

* * *

[394]

As I told you in the beginning, ladies and gentlemen, this case is a simple one. It's not aboutaccounting. It is simply about lies and choices. The employees, the investors, they had the right to trust these Chief Executive Officers. They had the right and they demanded to get the truth from these Chief Executive Officers about what was really going on at Enron. They had the right to have their interests put first every day ofthe week, each hour of the day. These were their rights, ladies and gentlemen, and these were duties and obligations willingly taken on by these two Defendants, Defendants who were paid 150 million and $220 million respectively to keep those rights and to observe with vigilance interests of those investors.

Ladies and gentlemen, this case will show you that these Defendants worked to lie and to mislead. They violated the duty of loyalty to those employees and to investors. They violated the duty of trust placed in them. They violated it by telling lie after lie about the true financial condition of Enron.

I've talked to you today about how they lied about Enron Broadband Services. They lied about Enron Energy Services. They lied through improper use of the reserves, sticking their hand in cookie jars to gin up an

* * *

**[395]**

extra penny or two of earnings, to create misleading portraits of financial health when the reality was otherwise.

They engaged in phony deals with LJM and their own Chief Financial Officer. They poured bad assets, the equivalent of nuclear waste, in buckets and kept it off the balance sheet away from the eyes of the investors; and they lied and misled investors and employees in the final darkening months for Enron prior to bankruptcy.

Those lies, those omissions, their violations of their rights and the duty of loyalty and honesty caused harm to investors, to employees, and to members of the public who did not have the same information about what was going on in Enron as these two men.

Because of their acts to lie and conceal key facts about what was really going on at Enron, they deprived the everyday investor of information that he or she needed to make good and fully informed decisions about what to do with their Enron stock while they had the benefit of that same information in moving around and selling their stock.

Ladies and gentlemen, lies and choices. It's a simple case.

**Direct Examination by Ms. Ruemmler**

**Witness: Mark Koenig**

**[1407]**

Q. **[MS. RUEMMLER]** But, Mr. Koenig, can you just tell us what this is?

A. **[MARK KOENIG]** This is Enron's Code of Ethics as of July, 2000.

Q. And is this a document with which you are familiar --

A. Yes.

**[1408]**

Q. Or you were at the time --

A. Yes.

* * *

Q. And if we could, please, turn to the third page of that document. It's actually marked page 2 because the cover page is not marked there. And if -- could you please read this document?

A. This page?

Q. Or this page. I'm sorry.

A. Yes. "As officers and employees of Enron Corp., its subsidiaries, and its affiliated companies, we are responsible for conducting the business affairs of the company in accordance with all applicable laws and in a moral and honest manner. To be sure that we understand what is expected of us, Enron has adopted certain policies, with the approval of the board of directors, which are set forth in this booklet.

"I ask that you read them carefully and completely and that, as you do, you reflect on your past actions to make certain that you have complied with the policies. It is absolutely essential that you fully -- that

**[1409]**

you fully comply with these policies in the future. If you have any questions, talk them over with your supervisor, manager, or Enron legal counsel.

"We want to be proud of Enron and to know that it enjoys a reputation for fairness and honesty and that it is respected. Gaining such respect is one aim of our advertising and public relations activities; but no matter how effective they may be, Enron's reputation finally depends on its people, on you and me. Let's keep that reputation high."

Signed July 1st, 2000, Kenneth L. Lay, chairman and chief executive officer.

Q. All right. And if we could turn to page 12 of that document, please?

A. (Complies.)

Q. And I'd just like to focus you in on the very last paragraph there, that -- that page. Could you read that for the jury, please?

A. Yes. "Relations with the company's many publics -- customers, stockholders, governments, employees, suppliers, press, and bankers -- will be conducted in honesty, candor and fairness."

Q. Now, Mr. Koenig, while you were working at Enron Corp. in investor relations, did you feel that you were being encouraged by Mr. Lay to conduct your relationship with the stockholders

**[1410]**

of the company in honesty, candor, and fairness?

A. At times, no.

**Cross Examination by Mr. Petrocelli**

**Witness: Mark Koenig**

**[1497]**

Q. **[MR. PETROCELLI]** Mr. Skilling, based on all your experience and time over the years with him, he was a true believer in Enron, wasn't he?

A. **[MARK KOENIG]** Yes.

Q. And he had a "never say die," "never" -- "never refuse to lose" attitude, right?

A. In my dealings with him at Enron, which is where I spent my time with him, he was aggressive. And I don't know how you characterize it, but I would agree with you, yes.

**Cross Examination by Mr. Holscher**

**Witness: Kenneth Rice**

**[3438]**

Q. **[MR. HOLSCHER]** And you agree that, for 10 years of his life, he gave nearly all his time and energy to the company?

A. I know that for that 10 years he was very committed to the company.

**Direct Examination by Ms. Ruemmler**

**Witness: David Delainey**

**[5109]**

Q. **[MS. RUEMMLER]** And was the stock price important at Enron?

A. **[DAVID DELAINEY]** Yes.

Q. Why?

**[5110]**

A. For the average employee and for the senior executive team, the stock price was very important because it was -- big parts of our compensation were tied to stock based compensation programs of one sort or another. So, you know, it was kind of in your mind's eye all the time.

## Direct Examination by Mr. Hueston

## Witness: Andrew Fastow

**[6410]**

Q. **[MR. HUESTON]** During that period of time, focusing on 1999 through October of 2001, briefly, what were your responsibilities as chief financial officer?

A. **[ANDREW FASTOW]** I was responsible primarily for raising the funding for Enron Corp. and for solving other financial problems that the company may have.

Q. All right. Were you also an officer of the company?

A. Yes.

Q. And what were your responsibilities as an officer of the company?

**[6411]**

A. I had a fiduciary responsibility to the shareholders.

Q. What does that mean?

A. That means I'm supposed to take actions to -- in the best interest of the shareholders of the company.

* * *

**[6425]**

A. One of the board members asked that question. And the answer was the biggest risk is the "Wall Street Journal" risk.

Q. And what did that mean?

A. That meant that if this became -- if this got picked up by the general public, by the media, and they were to report it on it -- report on it, whether it were right or wrong, it would look terrible and bring Enron under a lot of scrutiny and potentially cause, you know, problems for Enron for a while.

Q. And did the board, Mr. Lay and Mr. Skilling decide to assume that risk?

A. Yes.

Q. Was it approved?

A. Yes.

**Direct Examination by Mr. Adkins**

**Witness: Johnnie Nelson**

**[7880]**

Q. **[MR. ADKINS]** Let me ask you to look at a different exhibit, Exhibit 2590, please. And that has been previously admitted, as well. Do you recognize this document, sir?

A. **[JOHNNIE NELSON]** Yes. This is the code of ethics.

Q. And are you familiar with that out in New Mexico, as well?

A. Yes, sir. It was sent out to us on a yearly basis. We had to review it, sign the cover sheet and fax it back

**[7881]**

to an office here in Houston.

Q. What was your understanding as to who this code of ethics applied to at Enron?

A. Everyone in the company.

Q. Including the CEO?

A. Especially the CEO.

Q. Did you expect honesty and candor from the CEO of Enron?

A. Yes, I did.

Q. Did you expect the CEO of Enron to make sure that information was accurate before speaking with the employees about that information?

A. I would hope they would.

Q. Did you expect them to correct any misstatements if he found out that he made a misstatement?

A. Yes, I would.

**Direct Examination by Mr. Berkowitz**

**Witness: Wincenty Kaminski**

**[7954]**

Q. **[MR. BERKOWITZ]** So Mr. Fastow's partnership, if both go down, he owes Enron money?

A. **[WINCENTY KAMINSKI]** That's correct.

Q. Or the partnership does?

A. The partnership has to send the check to Enron.

Q. And what's the problem with that?

A. Well, the problem is that the partnership may find itself to be under capitalized because it's primary asset is Enron stock, which went down in value.

So my argument to Rick Buy was that this is a clear balance to gambling in the casino that is insolvent. If you lose, you lose. And if you win

Q. So if you win, the house can't pay you? You are playing blackjack and --

A. The house cannot pay you.

Q. Okay. And you explained that to Mr. Buy, that if both the Enron stock price went down and the Rhythms investment went down, there was a distinct possibility that the partnership couldn't pay its obligations?

A. Correct. The partnership could be not creditworthy to perform on its obligations to Enron.

* * *

[7959]

Q. So Mr. Skilling said he'd received complaints that you were acting more like cops than facilitating the completion of transactions?

A. That's correct.

Q. You were in -- just so I can understand this correctly, you were in the risk analytics and control department; correct?

A. That's correct.

Q. Did you view your job as being a cop?

A. Our mandate was to make sure that Enron wasn't taking excessive, reckless risks.

Q. And, sir, can you tell the jury -- can you tell the jury, sir, if, in fact, you were transferred?

A. I was transferred, correct.

Q. Were there any other transactions, sir, in this June, July 1999 time period that you and your group were recommending against doing, other than this Rhythms transaction with LJM?

A. None as far as I can remember. And I started an internal investigation to find out where we messed up, and I couldn't find any transaction where anybody would have complaints about our performance.

Q. Other than this one?

A. Other than this one.

## Cross Examination by Mr. Oppenheimer

## Witness: Wincenty Kaminski

[8095]

Q. **[MR. OPPENHEIMER]** He was a hard worker, from your point of view?

A. **[WINCENTY KAMINSKI]** He was. He was.

Q. Really dedicated to the company?

A. Yes, I would say so.

## Cross Examination by Mr. Petrocelli

## Witness: Ben Glisan

[9627]

Q. **[MR. PETROCELLI]** And as long as you knew Mr. Skilling and you knew Mr. -- Mr. Lay, you knew that they had the best interests of Enron in mind, didn't you?

They were fighting for their company. Is that a fair statement?

[9628]

A. **[BEN GLISAN]** I think that is a fair statement for a lot of us.

## Stipulation

[10204]

"It is hereby stipulated and agreed by and between the undersigned, that: On April 25, 2000, Jeffrey K. Skilling placed a telephone order with his brokers to sell 86,217 shares of Enron stock held in his account.

"Acting on these instructions, Skilling's brokers sold 10,000 shares of Enron stock on April 25, 2000 at sales prices of 73.875 and 73.9375 per share, resulting in gross proceeds, before commission and other expense deductions, of $738,893.75.

"Later on that same day, Skilling was told by his brokers that the rest of the order was canceled.

"After being told that the rest of his order had been canceled, Jeffrey K. Skilling placed a second telephone order with his brokers, on April 25, 2000, to sell 76,217 shares of Enron stock held in his account as follows: 25,000 shares at the opening price on April 26; 25,000 shares at $73 7/8 per share; and 26,217 shares at $74 per share.

"The following day, April 26, 2000, acting on these instructions, Skilling's brokers sold 76,217 shares, and due to an internal error at the brokerage firm,

**[10205]**

an additional 10,000 shares, at sales prices of $74, 73.875 and 72.50 per share, resulting in gross proceeds, before commission and other expense deductions, of $6,338,183.

"On August 29, 2000, Jeffrey K. Skilling placed a telephone order with his brokers to sell 86,441 shares of Enron stock held in his account as follows: 15,000 shares at market price on the 30th; 15,000 shares at 86.50 per share; 15,000 shares at 86.75 per share; 15,000 shares at $87 per share; 15" -- I'm sorry -- "15,000 shares at $87 per share; 15,000 shares at 87.25 per share; and 11,441 shares at 87.50 per share.

"Acting on these instructions, Skilling's brokers, on August 30, 2000, sold 15,000 shares of Enron stock at a sales price of 86.125 per share, resulting in gross proceeds, before commission and other expense deductions, of $1,291,875; and on September 1, 2000, sold 60,000 shares of Enron stock at sales price of $87, 86.875, and 87.25 per share, resulting in gross proceeds, before commission and other expense deductions, of $5,220,000. And on September 5th, 2000, Jeffrey K. Skilling changed his August 29, 2000 order to sell 11,441 at 87.50 per share to market price.

"Acting on these instructions, on September 5, 2000, Skilling's brokers sold 11,441 shares of Enron stock at a sales price of $85 per share, resulting in

gross proceeds, before commissions and other expense deductions, of $972,485.

"On November 1, 2000, Jeffrey K. Skilling placed a telephone order with his brokers to sell 138,668 shares of Enron stock held in his account. Acting on these instructions, Skilling's brokers, on November 1, 2000, sold 72,600 shares of Enron stock at an average sales price of 83,000" -- sorry -- "of 83.2406 and at a sales price of 83.0625 per share, resulting in gross proceeds, before commission and other expense deductions, of $6,041,023.50.

"On November 2, 2000, sold 20,000 shares of Enron stock at an average sales price of 82.3381 per share, resulting in gross proceeds, before commission and other expense deductions, of $1,646,762; and on November 7, 2000, sold 46,068 shares of Enron stock at an average sales price of 82.5872 per share, resulting in gross proceeds, before commission and other expense deductions, of 3,804,627.13.

"After Rule 10(b)(5)-1 became effective in October 2000, Jeffrey K. Skilling executed a written sales plan. Pursuant to the sales plan, beginning on November 15, 2000, and continuing for a period of 31 weeks, Skilling's brokers sold 10,000 shares of Enron stock per week from his account at sales prices ranging from 84 to 49.90 per share, resulting in gross proceeds, before commission and other expense deductions, of $20,985,257.42.

**[10207]**

"On September 17, 2001, Jeffrey K. Skilling placed a telephone order with his brokers to sell 500,000 shares of Enron stock held in his account, with instructions not to sell at a price below $30 per share.

"Acting on these instructions, on September 17, 2001, Skilling's brokers sold 500,000 shares of Enron stock at sales prices of 31.5061 and 31.0822 per share, resulting in gross proceeds, before commission and other expense deductions, of $15,587,305.10."

And it's signed before both parties, Your Honor.

**Cross Examination by Mr. Berkowitz**

**Witness: Jeffrey Skilling**

**[13070]**

Q. **[MR. BERKOWITZ]** And you owed those shareholders a duty of honesty, didn't you?

A. **[JEFFREY SKILLING]** Yes.

Q. A duty of candor?

A. Yes.

Q. A duty to provide them with the information that they needed to make the right investment choices; isn't that right?

A. Yes.

Q. And in exchange for those obligations, you were paid handsomely from 1999 to 2001; correct?

A. Yes.

Q. Paid handsomely before that as well; right?

A. Yes.

Q. And, in fact, you got rich beyond your wildest dreams

**[13071]**

while at Enron, didn't you?

A. That's right, yes.

Q. And bottom line of all this, Mr. Skilling, is that you and Mr. Lay were the captains of that ship at Enron, weren't you?

A. Yes.

Q. And you understand, don't you, that this case is about you and Mr. Lay and about whether, as captains of this ship, you breached your duties and obligations to those shareholders and employees? You understand that's what we're here to decide?

### Cross Examination by Mr. Hueston

### Witness: Ken Lay

[15459]

Q. **[MR. HUESTON]** It was reasonable for stockholders and employees to expect honesty and candor from you, sir, as the CEO?

A. **[KEN LAY]** It certainly was.

Q. And you were required to be honest with them as the CEO?

A. And I certainly tried.

* * *

**[15460]**

Q. And each time you communicated with them, you owed them honesty, correct?

A. And certainly tried to give them honesty.

Q. You owed them the full truth, right?

A. Yes.

Q. Not a half truth?

A. No. Just like I've sworn to give the full truth and not a half truth here in this trial.

Q. Okay. To tell those employees and shareholders what was really happening in the company, right?

A. As best I could, based on all the information I had.

Q. And in part -- and that, of course, means not just what you think they want to hear, right, what is really happening?

A. Yes.

Q. Because, as you know --

A. As best we knew, yeah.

Q. And because you know from your background and training as a

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PhD in economics, free markets work best with information, right?

A. Yes.

Q. Okay.

A. Hardly ever have perfect information but as much information as possible.

Q. We'll talk about that in specific areas shortly.

When you talked about an area of Enron's business, you were required, sir, to confirm that you were giving accurate information, right?

A. To confirm that I was giving accurate information? I'm not sure I know what you're referring to.

Q. Okay. Let me try to put a point on that. If somebody gave you a piece of information, sir, it was your job to do more than just read it to employees or investors, you were paid to do more than just read scripts, you were paid to actually exercise judgment as the chief executive officer in speaking and presenting facts to the employees and to the shareholders, correct?

A. Oh, and certainly, if I -- if I saw something in a script that I thought was wrong or inaccurate, if I have the knowledge or the information to know something was accurate or not true, sure, I would get it changed.

## Jury Instructions

**[17641]**

**THE COURT:** Members of the jury, in any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to decide what evidence is proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

First, I will give you some general instructions which apply in every case, for example, instructions about burden of proof and how to judge the believability of witnesses. Then I will give you some specific rules of law about this particular case. And finally, I will explain to you the procedures you should follow in your deliberations.

You, as jurors, are the judges of the facts; but in determining what actually happened, that is, in reaching your

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decision as to the facts, it is your sworn duty to follow all of the rules of law as I explain them to you. You have no right to disregard or give special attention to any one instruction or to question the wisdom or correctness of any rule I may state to you.

You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences.

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took before being accepted by the parties as jurors, and they have the right to expect nothing less.

The indictment or formal charge against a Defendant is not evidence of guilt. Indeed, each Defendant is presumed by the law to be innocent. The law does not require a Defendant to prove his innocence or to produce any evidence at all. The Government has the burden of proving each Defendant guilty beyond a reasonable doubt. And if it fails to do so, you must acquit the Defendant.

While the Government's burden of proof is a strict or heavy burden, it is not necessary that the Defendant's guilt be proved beyond all possible doubt. It is only required that the Government's proof exclude any reasonable doubt

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concerning the Defendant's guilt.

A reasonable doubt is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

As I told you earlier, it is your duty to determine the facts. In doing so, you must consider only the evidence presented during the trial, including the sworn testimony of the witnesses and the exhibits. Remember that any statements, objections, or arguments made by the lawyers are not evidence.

The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case and, in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice.

When the attorneys on both sides stipulate or agree as to the existence of a fact, you may accept the stipulation as evidence and regard that fact as proved. You are not required to do so since you are the sole judge of the facts.

During the trial, I sustained objections to certain questions and exhibits. You must disregard those questions and exhibits entirely. Do not speculate as to what the witness would have said if permitted to answer the question

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or as to the contents of an exhibit.

Also, certain testimony or other evidence has been ordered stricken from the record and you have been instructed to disregard this evidence. Do not consider any testimony or other evidence which has been stricken in reaching your decision. Your verdict must be based solely on the legally admissible evidence and testimony.

Also, do not assume from anything I may have done or said during the trial that I have any opinion concerning any of the issues in this case. Except for the instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own findings as to the facts.

While you should consider only the evidence, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common sense. In other words you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the evidence.

You should not be concerned about whether the evidence is direct or circumstantial. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of circumstances and events indicating that something is or is not a fact. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

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I remind you that it is your job to decide whether the Government has proved the guilt of the Defendants beyond a reasonable doubt. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or believability of each witness and the weight to be given the witness's testimony. An important part of your job will be making judgments about the testimony of the witnesses, including the Defendants, who testified in this case. You should decide whether you believe all or any part of what each person had to say and how important that testimony was.

In making that decision, I suggest that you ask yourself a few questions: Did the person impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have any personal interest in the outcome of the case? Did the witness have any relationship with either the Government or the defense? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses?

These are a few of the considerations that will help you determine the accuracy of what each witness said. The

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testimony of the Defendants should be weighed and their credibility evaluated in the same way as that of any other witness.

Your job is to think about the testimony of each witness you have heard and decide how much you believe of what each witness had to say. In making up your mind and reaching a verdict, do not make any decisions simply because there were more witnesses on one side than on the other. Do not reach a conclusion on a particular point just because there were more witnesses testifying for one side on that point.

During the trial, you heard the testimony of Jerry Arnold and Walter Rush who have expressed opinions concerning Enron's accounting and Christopher Barry who has expressed opinions of a financial economist. If scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified by knowledge, skill, experience, training, or education may testify and state an opinion concerning such matters.

Merely because such a witness has expressed an opinion does not mean, however, that you must accept this opinion. You should judge such testimony like any other testimony. You may accept it or reject it and give it as much weight as you think it deserves considering the witness's education and experience, the soundness of the reasons given for

the opinion, and all other evidence in the case.

You have heard evidence that before the trial some witnesses made statements that may be inconsistent with the witness's testimony here in court. If you find that earlier statements are inconsistent with trial testimony, you may consider the earlier statements in deciding the truthfulness and accuracy of the witness's testimony in this trial but not for the truth of the matters asserted. If a prior inconsistent statement was made under oath, however, you may also consider it as evidence of the truth of the matters contained in that prior statement.

If you believe that a witness has been discredited in this manner, it is your exclusive right to give the testimony of that witness whatever weight you think it deserves.

A statement made by a Defendant before trial that is inconsistent with the Defendant's testimony at trial may be used by you as evidence of the truth of the matters contained in it and may also be used in deciding the truthfulness and accuracy of that Defendant's testimony at this trial.

Where a Defendant has offered evidence of good general reputation for truth and veracity or honesty and integrity or as a law-abiding citizen, you should consider such evidence along with all the other evidence in the case.

Evidence of a Defendant's reputation inconsistent

with those traits of character ordinarily involved in the commission of the crimes charged may give rise to a reasonable doubt since you may think it improbable that a person of good character in respect to those traits would commit such a crime.

You will always bear in mind, however, that the law never imposes upon a Defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

There has been evidence that some of the witnesses who testified in this trial knowingly perjured themselves by lying under oath at another proceeding. The testimony of a perjurer should always be considered with caution and weighed with great care. It is, however, for you to decide how much of their testimony, if any, you believe.

You have been told that the witness Ben Glisan was convicted of conspiracy to commit wire and securities fraud. A conviction is a factor you may consider in deciding whether to believe that witness, but it does not necessarily destroy the witness's credibility.

It has been brought to your attention only because you may wish to consider it when you decide whether you believe the witness's testimony. It is not evidence of anything else. It may not be considered as evidence of Defendants' guilt.

The Government has called as witnesses Wes Colwell and Chris Loehr with whom it has entered into

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cooperation or non-prosecution agreements. As part of a cooperation or non-prosecution agreement, the Government promised not to prosecute these witnesses if they agreed to cooperate with and testify on behalf of the Government.

The testimony of one who provides evidence against a Defendant for immunity from punishment or for personal advantage or vindication must always be examined and weighed by the jury with greater care and caution than the testimony of ordinary witnesses. You, the jury, must decide whether the witness's testimony has been affected by any of those circumstances or by the witness's interest in the outcome of the case or by prejudice against the Defendant or by benefits that the witness has received either financially or as a result of being immunized from prosecution.

You should keep in mind that such testimony is always to be received with caution and weighed with great care. You should never convict any Defendant upon the unsupported testimony of such a witness unless you believe that testimony beyond a reasonable doubt.

The Government has called as witnesses several alleged accomplices, including Ben Glisan, Mark Koenig, Ken Rice, Paula Rieker, Tim Belden, David Delainey, Kevin Hannon, and Andrew Fastow with whom the Government has entered into plea agreements providing for the dismissal of some charges and/or a lesser sentence than the witness would otherwise be exposed to

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for the offense to which the witness pled guilty.

Such plea bargaining, as it is called, has been approved as lawful and proper and is expressly provided for in the rules of this court. An alleged accomplice, including one who has entered into a plea agreement with the Government, is not prohibited from testifying.

On the contrary, the testimony of such a witness may alone be of such weight to sustain a verdict of guilty. You should always keep in mind that such testimony is always to be received with caution and weighed with great care. You should never convict a Defendant upon the unsupported testimony of an alleged accomplice unless you believe that testimony beyond a reasonable doubt.

The fact that an accomplice has entered a plea of guilty to the offense charged is not evidence in and of itself of the guilt of any other person.

You have heard reference during the trial about various Enron internal ethical standards, certain civil regulations, and various applicable accounting requirements. A violation of these standards, regulations, or requirements should not be considered by you as a violation of the criminal law.

Whether the Defendants followed or deviated from these standards, regulations, or requirements is one circumstance you're entitled to consider and weigh in

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determining whether the Defendants had the required specific intent to violate the criminal law as charged in the indictment.

Certain charts and summaries have been shown to you solely to help explain the facts disclosed by the books, records, and other documents which are in evidence in the case. These charts and summaries are not evidence or proof of any facts. You should determine the facts from the evidence. Charts and summaries are only valid to the extent that they accurately reflect the underlying supporting evidence. You should give them only such weight as you think they deserve.

You will note that the indictment charges that the offenses were committed on or about a specified date and, in the case of Count 1 charging conspiracy, that the conspiracy existed in or about and between late 1999 and December, 2001.

The Government does not have to prove that the crimes were committed on an exact date or that the conspiracy existed between these exact dates as long as the Government proves beyond a reasonable doubt that the Defendant whose guilt you are considering committed the crime on a date or dates reasonably near the dates stated in the indictment.

You are here to decide whether the Government has proved beyond a reasonable doubt that the Defendants are guilty of the crimes charged. The Defendants are not on trial for any act, conduct, or offense not alleged in the indictment. Neither are you concerned with the guilt of any other person or persons not on trial as a Defendant in this case except as you are otherwise instructed.

If any Defendant is found guilty of any of the offenses charged in the indictment, it will be my duty to decide what the punishment will be. You should not be concerned with punishment in any way. It should not enter your consideration or discussion.

A separate crime is charged against one or both of the Defendants in each count of the indictment. Each count, and the evidence pertaining to it, should be considered separately. The case of each Defendant should be considered separately and individually. The fact that you may find one or more of the Defendants guilty or not guilty of any of the crimes charged should not control your verdict as to any other crime or any other Defendant. You must give separate consideration to the evidence as to each Defendant.

Good faith is a complete defense to the charges of conspiracy, securities fraud, and wire fraud contained in the indictment since good faith on the part of a Defendant is inconsistent with the intent to defraud or willfulness, which is an essential part of the charges.

The burden of proof is not on the Defendants to prove their good faith since they have no burden to prove anything. The Government must establish beyond a reasonable doubt that the Defendants acted with specific intent to defraud

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as charged in the indictment.

One who expresses an opinion honestly held by him or a belief honestly entertained by him is not chargeable with fraudulent intent even though his opinion is erroneous or his belief is mistaken. And similarly, evidence that establishes only that a person made a mistake in judgment or an error in management or was careless does not establish fraudulent intent.

On the other hand, an honest belief on the part of a Defendant that a particular business venture was sound and would ultimately succeed would not in and of itself constitute good faith as used in these instructions if, in carrying out the venture, a Defendant knowingly made false or fraudulent representations to others with the specific intent to deceive them.

Reliance on the advice of an accountant or attorney may constitute good faith. To decide whether such reliance was in good faith, you may consider whether the Defendant relied on a competent accountant or attorney concerning the material facts allegedly omitted or misrepresented, whether the accountant or attorney had all the relevant facts known to the Defendant at the time, whether the Defendant received an opinion from the accountant or attorney, whether the Defendant believed that the advice was given in good faith, and whether the Defendant reasonably followed the advice.

All right. Those are instructions helping you

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weigh the evidence. Now, I'm going to get to the specific instructions that relate to the counts charged against the Defendants.

Title 18, United States Code, Section 371 makes it a crime for anyone to conspire with someone else to commit an offense against the laws of the United States and to commit an overt act in furtherance of that conspiracy.

Both Defendants, Jeffrey K. Skilling and Kenneth L. Lay, are charged in Count 1 of the indictment with conspiring to commit two federal offenses.

Count 1 charges both Defendants with conspiring to commit securities fraud in violation of Title 15, United States Code, Section 78j(b) and 78ff of Rule 10b-5 of the Securities and Exchange Commission; Title 17, Code of Federal Regulations, Section 240.10b-5.

Count 1 also charges that Defendants Jeffrey K. Skilling and Kenneth L. Lay conspired to commit wire fraud in violation of Title 18, United States Code, Section 1343.

I will define the elements of the offenses of securities fraud and wire fraud later in my instructions relating to Counts 2 and 14, 16 through 20, and 22 through 29 of the indictment.

A conspiracy is an agreement between two or more persons to join together to accomplish some unlawful purpose. It is a kind of partnership in crime in which each member

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becomes the agent of every other member.

For you to find Jeffrey K. Skilling or Kenneth L. Lay guilty of conspiracy, you must be convinced that the Government has proved each of the following beyond a reasonable doubt:

First, that the Defendant and at least one other person made an agreement to commit the crime of securities fraud or wire fraud as charged in the indictment.

In this case, the indictment alleges the following objects or purposes of the agreement:

A: To willfully and unlawfully use and employ manipulative and deceptive contrivances and directly and indirectly to employ devices, schemes, and artifices to defraud; to make untrue statements of material fact and omit to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and to engage in acts, practices, and courses of conduct which would and did operate as a fraud and deceit upon members of the investing public in connection with the purchase and sale of Enron securities and by the use of instruments of communication in interstate commerce and the mails, all in violation of the statutes and rules I've read earlier to you.

And B: To devise a scheme and artifice to defraud Enron, its shareholders and other members of the investing public, the Securities and Exchange Commission, and

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others, including depriving Enron and its shareholders of the intangible right of honest services owed by Jeffrey K. Skilling and Kenneth L. Lay and other Enron executives to them and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and, for the purpose of executing such scheme and artifice, would transmit and cause to be transmitted by means of wire communications in interstate commerce signs, pictures, and sounds, all in violation of Title 18, United States Code, Section 1343.

Second: That the Defendants knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose. The Defendants, Jeffrey K. Skilling and Kenneth L. Lay, assert that they did not intentionally and knowingly engage in a conspiracy to defraud any person or entity as alleged in the indictment because they each assert that they followed the advice of counsel and accountants.

Third: That one of the conspirators, during the existence of the conspiracy, knowingly committed at least one of the overt acts described in the indictment in order to accomplish some object or purpose of the conspiracy.

One may become a member of a conspiracy without knowing all the details of the unlawful scheme or the identities of all the other alleged conspirators. If a Defendant

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understands the nature of a plan or scheme and knowingly and intentionally joins in that plan or scheme on one occasion, that is sufficient to convict him for conspiracy even though the

Defendant had not participated before and even though the Defendant played only a minor part.

The Government need not prove that the alleged conspirators entered into any formal agreement nor that they directly stated between themselves all the details of the scheme. Similarly, the Government need not prove that all of the details of the scheme alleged in the indictment were actually agreed upon or carried out. Nor must it prove that all of the persons alleged to have been members of the conspiracy were such or that the alleged conspirators actually succeeded in accomplishing their unlawful objectives.

Mere presence at the scene of an event, even with knowledge that a crime is being committed, or the mere fact that certain persons may have associated with each other and may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy. Also, a person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of a conspiracy does not thereby become a conspirator.

A conspirator is responsible for offenses committed by other conspirators if the conspirator was a member of the conspiracy when the offense was committed and if the

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offense was committed in furtherance of, or as a foreseeable consequence of, the conspiracy.

Therefore, if you have first found Jeffrey K. Skilling or Kenneth L. Lay guilty of the conspiracy charged in Count 1 and if you find beyond a reasonable doubt that during the time the Defendant was a member of that conspiracy other conspirators committed the offenses in Counts 2 and 14, 16 through 20, and 22 through 29 in furtherance of or as a foreseeable consequence of that conspiracy, then you may find the Defendant guilty of Counts 2 and 14, 16 through 20, and 22 through 29 even though the Defendant may not have participated in any of the acts which constitute the offenses described in those counts of the indictment.

The word "knowingly," as that term is used throughout these instructions, means that the act was done voluntarily and intentionally, not because of mistake or accident.

You may find that a Defendant had knowledge of a fact if you find that the Defendant deliberately closed his eyes to what would otherwise have been obvious to him. While knowledge on the part of a Defendant cannot be established merely by demonstrating that the Defendant was negligent, careless, or foolish, knowledge can be inferred if the Defendant deliberately blinded himself to the existence of a fact.

The term "willfully," as that term has been used

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from time to time in these instructions, means that the act was committed voluntarily and purposely with the specific intent to do something that the law forbids, that is to say, with bad purpose either to disobey or disregard the law.

To prove that the Defendant conspired to commit a federal offense, the Government must prove that such Defendant acted with the same intent required to be proved for commission of that offense.

Therefore, to prove that the Defendant conspired to commit the offense of fraud in connection with the sale or purchase of securities, the Government must prove that the Defendant acted with the specific intent to defraud, which term I will define for you, and that the Defendant acted willfully, as I have previously defined that term for you.

Similarly, to prove that a Defendant conspired to commit wire fraud, the Government must prove that he had the specific intent to defraud, which I will define for you.

To assist you in determining whether there was a conspiracy to commit the federal offenses of securities fraud or wire fraud, I will now instruct you with regard to the nature of the substantive federal crimes the Defendants are charged with conspiring to commit and/or with committing.

In doing so, I will describe to you the elements of the substantive offenses, that is to say, the things the Government must prove to establish that the Defendants committed

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the offenses. You should keep in mind that for purpose of Count 1 of the indictment, however, the Government need not prove that a Defendant committed either of the federal offenses that are alleged as the objects of the conspiracy charged in Count 1.

Instead, for Count 1, the Government must prove only that the Defendants you are considering conspired to commit one or more of these offenses.

You should keep in mind, however, that both objects of the conspiracy, in other words, both securities fraud and wire fraud, are also charged as separate substantive offenses in various counts of the indictment. Specifically, the substantive offense of securities fraud is charged in Counts 2, 14, 16 through 20, and 22 through 29 of the indictment.

In order to prove the securities fraud offense charged in these counts, the Government must prove all of the elements of securities fraud for which I am about to give you instructions.

Likewise, the substantive offense of wire fraud is charged against Defendant Kenneth L. Lay in Counts 12 and 13. In order to prove the wire fraud offense charged in each of Counts 12 and 13, the Government must prove all the elements of wire fraud for which I will later give you instructions.

Your verdict, whether it is guilty or not guilty, must be unanimous. The following instruction applies to the

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unanimity required as to Count 1. Count 1 of the second superseding indictment accuses the

Defendants of committing the crime of conspiracy in two different ways.

The first way alleged is that they conspired to commit the offense of securities fraud. The second way alleged is that they conspired to commit the offense of wire fraud. The Government does not have to prove both of these for you to return a guilty verdict on Count 1.

Proof beyond a reasonable doubt on one object of the conspiracy, together with evidence that each other element necessary to prove the charge of conspiracy has been proved beyond a reasonable doubt, is enough.

However, you must find the Defendant you are considering not guilty unless all 12 of you unanimously agree that the same object has been proved and that each other element necessary to prove the charge of conspiracy has been proved beyond a reasonable doubt.

Similarly, you must find the Defendant you are considering not guilty unless all 12 of you agree that one of the alleged conspirators knowingly committed at least one of the overt acts described in the indictment and that each other element necessary to prove the charge of conspiracy has been proved beyond a reasonable doubt.

It is not enough if some of you find that one overt act was committed and others of you find that a different

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overt act was committed. You must all believe that the same overt act or acts were committed in order to find that the Government has proven this element beyond a reasonable doubt.

You must determine whether the conspiracy charged in the indictment existed and, if it did, whether the Defendant was a member of it. If you find that the Defendant -- excuse me, if you find that the conspiracy charged did not exist, then you must return a not guilty verdict, even though you find that some other conspiracy existed.

If you find that a Defendant was not a member of the conspiracy charged in the indictment, then you must find that Defendant not guilty, even though that Defendant may have been a member of some other conspiracy.

Count 2 of the indictment charges Defendant Jeffrey K. Skilling with securities fraud in relation to the construction and use of the Enron financial devices known as the Raptors. Counts 14 and 16 through 20 charge Defendant Skilling with securities fraud in relation to forms filed by Enron with the Securities and Exchange Commission.

And I'm going to describe the counts.

Count 14: Form 10-K for Enron for the fiscal year 1999, dated March 30, 2000;

Count 16: Form 10-Q for Enron for the second quarter 2000, dated August 14, 2000;

Count 17: Form 10-Q for Enron for the third

quarter 2000, dated November 14, 2000;

Count 18: Form 10-K for Enron for the fiscal year 2000, dated April 2, 2001;

Count 19: Form 10-Q for Enron for the first quarter 2001, dated May 15, 2001;

Count 20: Form 10-Q for Enron for the second quarter 2001, dated August 14, 2001.

Counts 22 through 26 charge Defendant Skilling with securities fraud based on presentations to securities analysts and rating agencies:

Count 22: January 22, 2001, fourth quarter 2000 analyst conference call;

Count 23: January 25, 2001, annual analyst conference call in Houston, Texas;

Count 24: March 23, 2001, analyst conference call to discuss Enron stock price;

Count 25: April 17, 2001, first quarter 2001 analyst conference call;

Count 26: July 12, 2001, second quarter 2001 analyst conference call.

Counts 27 through 29 charge Defendant Kenneth L. Lay with securities fraud also based on presentations to securities analysts and rating agencies:

Count 27: October 12, 2001, telephone call with rating agency representative in New York;

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Count 28: October 16, 2001, third quarter 2001 analyst conference call;

Count 29: October 23, 2001, analyst conference call.

Counts 42 through 51 charge Defendant Jeffrey K. Skilling with a particular type of securities fraud known as insider trading. That offense is not an object of the conspiracy charged in Count 1.

In order to find either Defendant guilty of the securities fraud as charged in Counts 2, 14, 16 through 20, and 22 through 29, you must find that the Government has proved the following elements beyond a reasonable doubt:

First: That the Defendant knowingly did any one or more of the following acts:

One: Employed a device, scheme or artifice to defraud, or

Two: Made an untrue statement of a material fact or omitted to state a material fact that made what was said, under the circumstances, misleading, or

Three, engaged in an act, practice, or course of business that operated, or would operate, as a fraud or deceit upon members of the investing public;

Second: That the Defendant did so in connection with the purchase or sale of the securities of Enron Corporation;

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Third: That the Defendant acted willfully and with the intent to defraud; and

Fourth: That the Defendant used or caused to be used any means or instruments of transportation or communication in interstate commerce, or the mails, or the facilities of a national securities exchange in furtherance of the fraudulent conduct.

A "device" is an invention, a contrivance, or the result of some plan or design.

A "scheme" is a design or a plan formed to accomplish some purpose.

An "artifice" is an ingenious contrivance or plan of some kind.

There is nothing about the terms "device," "scheme," or "artifice" that in themselves imply anything fraudulent. The terms are plain English words that are neutral.

A "device, scheme, or artifice to defraud," as used in these instructions, however, means the forming of some invention, contrivance, plan, or design to trick or to deceive in order to obtain money or something of value.

With regard to alleged untrue statements and omissions as referenced throughout these instructions, you must determine whether an alleged statement was true or false when it was made or, in the case of omissions, whether the omission of a fact made what was said misleading under the circumstances.

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The Government may establish that a statement predicting future events concerning Enron or its stock constitutes an untrue statement if it proves beyond a reasonable doubt that the Defendant did not believe the statement when he made it; the Defendant lacked a reasonable basis in fact for the statement when he made it; or the Defendant knowingly concealed adverse, material information when he made the statement. A prediction is not untrue, however, simply because it turns out to be wrong.

Likewise, a statement is not false simply because it omits relevant facts. You must decide whether the statement is false in light of all the circumstances in which each particular statement was made.

The Government must prove beyond a reasonable doubt that each alleged omission of material fact was misleading because a Defendant failed to disclose material information that was necessary to make an allegedly false statement accurate or complete, and therefore, not misleading.

If you should decide that a particular statement or a particular omission was misleading at the time that it was made, then you must determine if the fact stated or omitted was a material fact or a material omission under the evidence received in this case. You must unanimously agree that any particular statement or particular omission was false or misleading and that it was material.

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In order for you to find a fact or omission material, the Government must prove beyond a reasonable doubt that the fact misstated or the fact omitted was of such importance that it could reasonably be expected to cause or to induce a person to invest or to cause or induce a person not to invest in Enron stock.

Assessment of materiality requires you to view the facts misstated or the fact omitted in the context of all the circumstances, including the total mix of information made available.

The securities fraud statute under which Counts 2, 14, 16 through 20, and 22 through 29 of the indictment are brought is concerned only with such material misstatements or such material omissions and this statute does not cover minor or meaningless or unimportant misstatements or omissions.

With respect to the second element of a securities fraud offense, the indictment alleges certain types of fraudulent conduct in connection with the purchase or sale of any security. The Government must prove beyond a reasonable doubt, therefore, that there were purchases or sales of securities and that the fraud or deceit described in the indictment had some relationship to or was connected with these sales or purchases.

The Government need not show, however, that either of the Defendants or anyone associated with them bought

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or sold the securities in question.

With respect to the third element of a securities fraud offense, the indictment alleges that the Defendants acted willfully and with the intent to defraud.

An intent to defraud, as used throughout these instructions, means an intent to deceive or cheat someone.

With respect to the fourth element of a securities fraud offense, the term "interstate commerce," as used in these instructions, means trade or commerce in securities or any transportation or communication relating to such trade or commerce among the several states.

The term "commerce," as used throughout these instructions, includes travel, trade, transportation, and communication.

The term "interstate commerce," as used throughout these instructions, means commerce or travel between one state, territory, or possession of the United States and another state, territory, or possession of the United States, including the District of Columbia.

This element of the crime charged may be established if the Government proves beyond a reasonable doubt that any means or instruments of interstate transportation or communication, or the mails, were, in fact, used in the scheme or that such use was reasonably foreseeable.

In this regard, however, it is not necessary for

the Government to prove that a Defendant personally carried out the use of interstate commerce or the use of the mails. It is not necessary to prove that such use was contemplated or intended by anyone involved in the scheme. It is sufficient for the Government to prove that beyond a reasonable doubt the

Defendant set forces in motion which reasonably resulted in such use.

The matter, material, or information mailed, transported, or communicated need not itself contain a fraudulent representation or request money but must be a part of the overall scheme.

You have been instructed that your verdict, whether it is guilty or not guilty, must be unanimous. The following instruction applies to the unanimity requirement as to Counts 2, 14, 16 through 20, and 22 through 26 charged against Mr. Skilling and Counts 27 through 29 charged against Mr. Lay in the second superseding indictment.

These counts of the indictment accuse the Defendants of committing securities fraud in three different ways. The first is that the Defendants committed securities fraud by employing devices, schemes, or artifices to defraud.

The second is that the Defendants committed securities fraud by making untrue statements of material facts and omitting to state facts necessary in order to make the statements made, in light of the circumstances under which they

**[17670]**

were made, not misleading.

The third is that the Defendants committed securities fraud by engaging in acts, practices, and courses of conduct which operated as a fraud and deceit upon members of the investing public.

The Government does not have to prove all of these for you to return a guilty verdict on each of these charges. Proof beyond a reasonable doubt on one is enough.

However, you must find that the Defendant -- you must find the Defendant not guilty on a specific count unless all 12 of you agree that the same device, scheme, artifice, statement, omission, act, practice, or course of conduct alleged to have been used has been proven beyond a reasonable doubt and that each other element necessary to prove securities fraud for that count has also been proven beyond a reasonable doubt.

It is not enough that some of you find that a Defendant used one means and others of you find that he used different means. You must all unanimously believe that the same device, scheme, artifice, statement, omission, act, practice, or course of conduct was used in order to find that the Government has proved this element beyond a reasonable doubt.

I will now turn to the charges of wire fraud. Wire fraud is the second object of the conspiracy offense alleged in Count 1 against both Defendants. Also, Counts 12 and 13 charge Defendant Kenneth L. Lay with the substantive offense

**[17671]**

of wire fraud, in violation of Title 18, United States Code, Section 1343 in two different particulars:

Count 12: September 26, 2001, Enron Online Forum electronic transmission from Houston, Texas, to other states and internationally; and

Count 13: October 23, 2001, all-employee meeting video teleconference from Houston, Texas, to other states and internationally.

Title 18, United States Code, Section 1343, makes it a crime for anyone to use interstate wire communication facilities in carrying out a scheme to defraud.

For you to find that Defendant Lay committed wire fraud, the Government has to prove each of the following beyond a reasonable doubt:

First: That the Defendant knowingly created a scheme to defraud, that is, the scheme charged in the indictment;

Second: That the Defendant acted with a specific intent to defraud;

Third: That the Defendant used or caused another person to use interstate wire communications facilities for the purpose of carrying out the scheme; and

Fourth: That the scheme to defraud employed false material representations.

A scheme to defraud includes any scheme to

**[17672]**

deprive another of money, property, or the intangible right to honest services by means of false or fraudulent pretenses, representations, or omission -- excuse me, representations or promises.

The term "property rights," as used herein, includes intangible as well as tangible property rights. It includes any property right which has a value, not necessarily a monetary value, to the owner of the property right.

"Honest services," as used in this instruction, are the services required by the Defendants' fiduciary duty to Enron and its shareholders under state law and include the duties of loyalty and honesty to Enron and its shareholders.

To show that Defendants deprived Enron and its shareholders of their right to honest services, the Government must prove beyond a reasonable doubt that, in rendering some particular service or services, the Defendant knew that his actions were not in the best interests of Enron and its shareholders or that he consciously contemplated or intended such actions and that Enron or its shareholders suffered a detriment from Defendant's breach of his duty to render honest services.

If the Defendant honestly rendered all the services his position called for and if these and all other services rendered by him are the services that would be rendered by a totally faithful employee and if the scheme does not

**[17673]**

contemplate otherwise, then there has been no deprivation of honest services.

A representation is false if it is known to be untrue or is made with reckless indifference as to its truth or falsity. A representation would also be false when it constitutes a half truth or effectively omits or conceals a material fact provided it is made with intent to defraud. A representation is misleading if it is calculated to deceive.

A false statement is material if it has a natural tendency to influence or is capable of influencing the decision of the person or entity to which it is addressed.

It is not necessary that the Government prove all of the details alleged in the indictment concerning the precise nature and purpose of the scheme or that the material transmitted by wire was itself false or fraudulent or that the alleged scheme actually succeeded in defrauding anyone or that the use of interstate wire communications facilities was intended as the specific or exclusive means of accomplishing the alleged fraud.

What must be proved beyond a reasonable doubt is that the Defendant knowingly devised or intended to devise a scheme to defraud that was substantially the same as the one alleged in the indictment and that the use of the interstate wire communications facilities was closely related to the scheme because the Defendant either wired something or caused it to be

**[17674]**

wired in interstate commerce in an attempt to execute or carry out the scheme.

To cause interstate wire communications facilities to be used is to do an act with knowledge that the use of the wire facilities will follow in the ordinary course of business or where such use can reasonably be foreseen.

Each separate use of the interstate wire communications facilities in furtherance of a scheme to defraud constitutes a separate offense.

You have been instructed that your verdict, whether it is guilty or not guilty, must be unanimous. The following instruction applies to the unanimity requirement as to Counts 12 and 13 charged against Mr. Lay in the second superseding indictment. These counts of the indictment accuse Defendant Lay of committing wire fraud in two different ways.

The first is that Defendant Lay committed wire fraud by depriving Enron and its shareholders of the intangible right of honest services owed by Mr. Lay and other Enron executives to them. The second is that Mr. Lay committed wire fraud to obtain money and property by means of materially false and fraudulent pretenses.

The Government does not have to prove both of these ways for you to return a guilty verdict on each of these charges. Proof beyond a reasonable doubt on one way is enough. But in order to return a guilty verdict, all 12 of you must

agree that the same one way has been proved.

All of you must agree that the Government proved beyond a reasonable doubt that Defendant Kenneth L. Lay committed wire fraud by depriving Enron and its shareholders of the intangible right of honest services owed by Mr. Lay and other Enron executives to them or all of you must agree that the Government proved beyond a reasonable doubt that Mr. Lay committed wire fraud to obtain money and property by means of materially false and fraudulent pretenses.

Counts 31 and 32 charge Mr. Skilling with making false statements to accountants in annual representation letters as follows:

Count 31: March 13, 2000, annual representation letter in connection with the Enron Form 10-K for year 1999;

Count 32: February 23, 2001, annual representation letter in connection with the Enron Form 10-K for year 2000.

Counts 34 through 36 charge Defendant Skilling with making false statements to accountants in quarterly representation letters as follows:

Count 34: August 11, 2000, quarterly representation letter in connection with the Enron Form 10-Q for second quarter 2000.

Count 35: November 13, 2000, quarterly representation letter in connection with the Enron Form 10-Q for

**[17676]**

third quarter 2000.

Count 36: May 15, 2001, quarterly representation letter in connection with the Enron Form 10-Q for the first quarter 2001.

In order for you to find Defendant Skilling guilty of these charges, you must find that the Government has proved the following beyond a reasonable doubt:

First: That at the time of the alleged offense, Mr. Skilling was an officer or director of an issuer of a security registered pursuant to Section 78(l), Title 15, United States Code;

Second: That Enron was required to make the financial statements described above;

Third: That the Defendant, directly or indirectly, made or caused to be made a materially false or misleading statement, or omitted to state, or caused another person to omit to state, a material fact necessary to make the statement, in light of all the circumstances under which it was made, not misleading to an accountant in connection with the audit, examination, preparation, or filing of the financial statements I just mentioned;

Fourth: That the Defendant acted knowingly and willfully.

With respect to the first element, the parties have stipulated that at all times relevant to the indictment,

Mr. Skilling was a director or officer of an issuer of a security registered pursuant to Section 78(l) of this Title 15, United States Code.

With respect to the second element, the parties have stipulated that each of the aforementioned 10-K and 10-Q filings were financial statements that Enron was required to make pursuant to Title 15, United States Code, Section 78(m) or otherwise were prepared or filed by Enron as required by the Securities and Exchange Commission.

With respect to the third element, a representation is false if it is known to be untrue or is made with reckless indifference as to its truth or falsity. A representation would be false when it constitutes a half truth or effectively omits or conceals a material fact, provided it is made knowingly and willfully. A representation is misleading if it is calculated to deceive.

If you should decide that a particular statement or a particular omission was false or misleading at the time that it was made, then you must determine if the fact stated or omitted was a material fact or a material omission under the evidence received in this case.

You must unanimously agree that some particular statement or some particular omission was false or misleading and that it was material.

In order for you to find that a fact or an

omission was material, the Government must prove beyond a reasonable doubt that it has a natural tendency to influence or is capable of influencing the decision of the person or entity to which it is addressed.

The statute prohibiting the making of false statements to accountants under which Counts 13 -- excuse me, under which Counts 31 and 32 and 34 through 36 of the indictment are brought are concerned only with such material misstatements or such material omissions and do not cover minor or meaningless or unimportant misstatements or omissions.

With respect to the fourth element, the indictment alleges that Defendant Skilling acted knowingly and willfully.

For each of the Counts 31 and 32 and 34 through 36, Defendant Skilling is charged not only as a principal but also as an aider and abettor.

To prove that Defendant Skilling is guilty as an aider and abettor, it is not necessary for the Government to show that the Defendant personally did every act constituting the offense alleged.

The law recognizes that ordinarily anything a person can do for himself may also be accomplished by that person through the direction of another person as his or her agent, or by acting in concert with, or under the direction of, another person or persons in a joint effort or enterprise.

If another person is acting under the direction of the Defendant or if the Defendant joins another person and performs acts with the intent to commit a crime, then the law holds the Defendant responsible for the acts and conduct of such other persons just as though the Defendant had committed the acts or engaged in such conduct.

Before any Defendant may be held criminally responsible for the acts of others, it is necessary that the accused deliberately associate himself in some way with the crime and participate in it with the intent to bring about the crime.

Of course, mere presence at the scene of a crime and knowledge that a crime is being committed are not sufficient to establish that a Defendant either directed or aided and abetted the crime unless you find beyond a reasonable doubt that the Defendant was a participant and not merely a knowing spectator.

In other words, you may not find Defendant Jeffrey K. Skilling guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons and that the Defendant voluntarily participated in its commission with the intent to violate the law.

For you to find the Defendant Jeffrey K. Skilling guilty of this crime, you must be convinced that the Government

**[17680]**

has proved each of the following beyond a reasonable doubt:

First: That the offenses alleged in one or more of Counts 31 and 32 and 34 through 36 were committed by some person;

Second: That Defendant Skilling associated with the criminal venture;

Third: That the Defendant purposely participated in the criminal venture;

And fourth: That the Defendant sought by action to make that venture successful.

"To associate with the criminal venture" means that the Defendant shared the criminal intent of the principal. This element cannot be established if the Defendant had no knowledge of the principal's criminal venture.

"To participate in the criminal venture" means that the Defendant engaged in some affirmative conduct designed to aid the venture or assist the principal of the crime.

Counts 42 through 51 of the indictment charge Defendant Jeffrey K. Skilling with securities fraud by employing the fraudulent device of insider trading, in violation of Title 15, United States Code, Section 78j(b) of the Securities and Exchange Commission -- excuse me, and Securities and Exchange Commission Rule 10b-5 for the following sales of Enron stock:

Count 42 -- and I'm not going to read these dates and amounts. You have them before you, and you can read them.

**[17681]**

Continuing on page 47, in order to find Defendant Skilling guilty of these offenses, you must find that the Government has proved the following elements beyond a reasonable doubt:

First: That the Defendant knowingly employed a device, scheme, or artifice to defraud;

Second: That the Defendant acted willfully and with the intent to defraud;

And third: That the Defendant used or caused to be used any means or instruments of transportation or communication in interstate commerce or the mails or the facilities of a national securities exchange in furtherance of the fraudulent conduct.

With respect to the first element of this securities fraud offense, the indictment alleges that Mr. Skilling employed the fraudulent device of engaging in insider trading. Insider trading occurs when a corporate insider, through a relationship of trust and confidence, gains access to material, non-public information intended to be used only for corporate purposes and trades in the securities of his corporation on the basis of that material, non-public information.

In order to find that Defendant Skilling employed the fraudulent device of insider trading, you must find that the Government has proved beyond a reasonable doubt that, one, the

**[17682]**

Defendant was an insider at Enron; two, the Defendant possessed material, non-public information about Enron or its securities; and three, the Defendant sold Enron stock, as alleged in the count, under consideration on the basis of the material, non-public information.

Corporate insiders are the officers, directors, and other permanent employees of the corporation. Information is material if there is a substantial likelihood that a reasonable shareholder would consider it important in making an investment decision. Information is non-public if it is intended to be available only for a corporate purpose and has not been disseminated to the investing public.

To establish that Mr. Skilling sold Enron stock on the basis of the material, non-public information, the Government must prove beyond a reasonable doubt that he used the material, non-public information in making his decision to sell Enron stock.

With respect to the second element of this securities fraud offense, the indictment alleges that the Defendant acted knowingly and willfully and with the intent to defraud.

With respect to the third element of this securities fraud offense, the term "interstate commerce" means trade or commerce in securities or any transportation or communication relating to such trade or commerce among the

**[17683]**

several states.

The element of the crime charged may be established if the Government proves beyond a reasonable doubt that any means or instruments of interstate transportation or communication, or the mails were, in fact, used in the scheme or that such use was reasonably foreseeable.

In this regard, however, it is not necessary for the Government to prove that the Defendant personally carried out the use of interstate commerce or the use of the mails. It is not necessary to prove that such use was contemplated or intended by anyone involved in the scheme. It is sufficient for the Government to prove that beyond a reasonable doubt the Defendant set forces in motion which reasonably resulted in such use.

The matter, material, or information mailed, transported, or communicated need not itself contain a fraudulent representation or request money but must be part of the overall scheme.

Count 50 in the indictment alleges that the Defendant Jeffrey K. Skilling sold 10,000 shares of Enron stock per week for 31 weeks pursuant to a written sales plan which commenced on November 15, 2000.

For Count 50, it is a complete defense to the charge of insider trading if you find the following with respect to Mr. Skilling's sale of Enron stock:

**[17684]**

First: That before becoming aware of the material, non-public information, Mr. Skilling had entered into a binding contract to sell the Enron stock or instructed another person to sell the Enron stock for his account or adopted a written plan for trading the Enron stock.

Second: That the contract, instruction, or plan specified the amount of stock to be sold and the price at which and date on which the stock was to be sold or, (b), included a written formula or algorithm or computer program for determining the amount of Enron stock to be sold and the price at which and the date on which the stock was to be sold or did not permit Mr. Skilling to exercise any subsequent influences over how, when, or whether to effect sales, provided that the person who, under the contract, instruction, or plan, did exercise such influence, was not aware of the material non-public information when doing so.

Third: The sale of Enron stock was pursuant to the contract, instruction, or plan. A sale is not pursuant to a contract, instruction, or plan if Mr. Skilling altered or deviated from the contract, instruction, or plan by changing the amount, price, or timing of the sale or entered into or altered a corresponding or hedging transaction or position with respect to the Enron stock.

Fourth: That Mr. Skilling entered into a contract or plan or gave the instruction in good faith and not

**[17685]**

as part of a plan or scheme to evade the prohibitions against insider trading.

You have been instructed that your verdict, whether it is guilty or not guilty, must be unanimous. The following instruction applies to the unanimity requirement as to Counts 42 through 51.

So, in each of Counts 42 through 51, the Government accuses the Defendant Skilling of insider trading, claiming that he used certain material, non-public information as the basis for his sale of Enron stock on various dates alleged in the indictment.

For each count, you must find Defendant Jeffrey K. Skilling not guilty unless all 12 of you agree that the same material, non-public information alleged to have been used has been proven beyond a reasonable doubt and that each other element necessary to prove the charge of insider trading has been proved beyond a reasonable doubt.

Now, I'm going to give you some general instructions as to how you should arrive at your verdict.

To reach a verdict, whether it is guilty or not guilty, all of you must agree. Your verdict must be unanimous on each count of the indictment. Your deliberations will be secret. You will never have to explain your verdict to anyone.

It is your duty to consult with one another and to deliberate in an effort to reach agreement, if you can do so.

**[17686]**

Each of you must decide the case for yourself but only after an impartial consideration of all the evidence with your fellow jurors.

During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

Remember at all times you are judges, judges of the facts. Your duty is to decide whether the Government has proved the Defendant guilty beyond a reasonable doubt.

When you go to the jury room, the first thing that you should do is select one of your number as your foreperson who will help to guide your deliberations and will speak for you here in the courtroom.

A form of verdict has been prepared for your convenience. The foreperson will write the unanimous answer of the jury in ink in the space provided for each count of the indictment, either guilty or not guilty.

At the conclusion of your deliberations, the foreperson should date and sign the verdict.

If you need to communicate with me during your deliberations, the foreperson should write the message and give it to the marshal. I will either reply in writing or bring you

**[17687]**

back into court to answer your message.

Bear in mind that you are never to reveal to anyone, not even to the Court, how the jury stands numerically or otherwise on any count of the indictment until after you have reached a verdict.

Now, you also have before you copies of the verdict form. There is a separate verdict form as to Mr. Skilling. It is six pages long. And there is a separate verdict form as to Mr. Lay. It is two pages long.

You'll see that, when you have reached a unanimous verdict as to a particular count, the foreperson will write in opposite that count the words "guilty" or the word "not guilty" and then will date and sign the verdict on the last page.

## Closing Argument by Ms. Ruemmler

**[17689]**

What was the reason for the deception? Why did the Defendants lie? It's a simple story really, ladies and gentlemen. The deception kept the story alive and the stock price up. You heard from both Mr. Lay and Mr. Skilling that the Enron stock price was critical. They loved Enron. They were Enron. Enron was their identity, their personal fortunes. Their egos, their business reputations were all wrapped up in the Enron stock price and the Enron story.

When the stock price was high, these men and their lieutenants were on top of the world, and they got rich in the process.

And ladies and gentlemen, make no mistake. There's absolutely nothing wrong with getting rich. Everybody in this country has the opportunity to achieve success and to get rich. But what you can't do is you can't get rich through deception, you can't get rich by cheating.

And what these two men did is they got rich at the expense of others. As a result of the lies that these

**[17690]**

Defendants told, investors and employees of Enron lost millions and millions of dollars. There were victims of these lies, real people, people who did not know the true story, people who didn't know what was really going on on the inside, people who were deprived of the truth by these two men, people who were entitled to the truth, average American investors.

* * *

**[17693]**

On that day, ladies and gentlemen, Mr. Skilling and Mr. Lay had a choice. They could come clean and tell the truth about Enron's financial condition or they could lie to cover it up. They chose to lie. The consequences of telling the truth on that day -- you've heard a lot about this, ladies and gentlemen -- a stock downgrade for sure; a debt filing for bankruptcy, a reasonable possibility; financial and reputational ruin for both of them. To tell the truth, they would have to admit what they had systematically been covering up for so long. A critical choice. Tell the truth or lie, and they chose to lie.

On that day, August 14th of 2001, Jeff Skilling and Ken Lay told Enron's investors and employees that the company was in the strongest and best financial shape that it had ever been in. It wasn't. That wasn't true, and they knew that. Approximately three months later after this critical day, Enron collapsed.

* * *

**[17695]**

During this period of time between August 14th and September 7th of 2001, as Mr. Lay is receiving this

**[17696]**

disturbing news, he quietly sells $20 million of stock back to the company. And on September 6th, a mere three weeks after resigning from the company, Mr. Skilling attempts to sell 200,000 shares of his Enron stock.

He then preposterously claims that he has absolutely no recollection of that whatsoever. A mere nine days later, Mr. Skilling follows through on that attempt to sell. He sells $500,000 -- 500,000 shares, excuse me, grossing $15 million in profits.

* * *

[17714]

All right. Let's get to the evidence and where the conspiracy starts, and it gets useful to talk -- to give some backdrop. What caused all of these executives at Enron to engage in conduct which was designed to deceive Enron's investors? What caused it? What's the backdrop for it?

You heard from all of these witnesses --

Can we have the next slide, please.

Virtually every Government witness, ladies and gentlemen, told you that at Enron it was critically important for Enron to meet its earnings targets. There was tremendous pressure at Enron to generate earnings and hit earnings targets. Earnings were critical.

Mr. Koenig told you, "Earnings and earnings per share growth were the most important things that shareholders and investors looked at. If we missed by a penny, we thought the stock price would go down."

Ms. Rieker: "It was very important for management to meet or beat analysts' expectations."

"What would be the consequence of missing?"

"Stock price would go down."

The next page, please.

Dave Delainey: "Most important criteria to your success was your ability to reach your financial targets. It

[17715]

was very important to your ability to succeed in the company."

Mr. Fastow: "At Enron the culture was and the practice seemed to be do transactions that maximized financial reporting earnings as opposed to maximizing the true economic value of transactions."

Mr. Glisan: "There was always a great deal of pressure to hit those targets. It seemed that the pressure continued to increase through 2000 and 2001."

Mr. Rice: "There was a lot of pressure within Enron to hit your earnings targets."

Pressure, pressure, pressure. It causes people to go right up into the line and, when necessary, to cross over. That's the backdrop. So you know that the earnings -- that hitting the earnings numbers were critical to the stock price and the stock price was critical to Mr. Lay and Mr. Skilling.

## Closing Argument by Mr. Berkowitz

**[18235]**

If what you heard is business as usual in corporate America over the last four months, ladies and

**[18236]**

gentlemen, I'd suggest that we all take our money out of the stock market and nobody should ever put another nickel in there. It is not business as usual. Don't let them fool you. It's a crime to fudge your numbers. It's a crime to lie to your investors. It's a crime to put yourself ahead of the investors. It's a crime to omit important facts. And it's a crime to portray your company as something that it isn't. And that's exactly what they did.

They lied to their investors. They omitted critical facts. And at key times, they put their own interests ahead of the shareholders. And they lied to you, ladies and gentlemen, from the stand.

* * *

**[18309]**

It's not a case about greed, ladies and gentlemen; but make no mistake, they got wealthy while they were at Enron, rich beyond Mr. Skilling's wildest dreams. And in exchange for that money, they owed their employees a duty, a duty of good faith and honest services, a duty to be truthful, and a duty to do their job, ladies and gentlemen, to do their job and to do it appropriately.

* * *

**[18310]**

This is a simple case, ladies and gentlemen. Because it's so simple, I'm probably going to end before my allotted time. It's black and white. Truth and lies. The shareholders, ladies and gentlemen, Johnny Nelson, Patty Klien, John Sides, and the rest, buy a share of stock, and for that they're not entitled to much but they're entitled to the truth.

They're entitled for the officers and employees of the company to put their interests ahead of their own. They're entitled to be told what the financial condition of the company is. They are entitled to honesty, ladies and gentlemen. They're not entitled to people who say, "You just wouldn't understand if we told you the truth. You just wouldn't get it. Give us another quarter. Give us another year. We're going to

**[18311]**

right this ship. We're going to make it great. But I can't tell you everything because, if you knew everything, you'd get your money out. I know better than you."

* * *

**[18311]**

You get to decide whether they told truths or whether they told lies. Black and white. I submit, ladies and gentlemen, that, when you consider all of the evidence, you will conclude beyond a reasonable doubt that these men lied. They withheld the truth. They put themselves in front of their investors. And I'm asking you to send them a message that it's not all right. You can't buy justice. You have to earn it.

# APPENDIX R

# JUDGMENT

## UNITED STATES DISTRICT COURT
## Southern District of Texas
## Holding Session in Houston

| | |
|---|---|
| United States of America<br>v.<br>**JEFFREY K. SKILLING** | **JUDGMENT IN A CRIMINAL CASE** |
| | CASE NUMBER: 4:04CR00025-002<br>USM NUMBER: 29296-179<br>**Daniel M. Petrocelli**<br>Defendant's Attorney |

☐ See Additional Aliases.

**THE DEFENDANT:**

☐ pleaded guilty to count(s) ____________________

☐ pleaded nolo contendere to count(s) which was accepted by the court. ____________________

■ was found guilty on count(s) after a plea of not guilty. 1SS, 2SS, 14SS, 16SS-20SS, 22SS-26SS, 31SS-32SS, 34SS-36SS, and 51SS on May 25, 2006.

The defendant is adjudicated guilty of these offenses:

| Title & Section | Nature of Offense | Offense Ended | Count |
|---|---|---|---|
| 18 U.S.C. § 371 | Conspiracy to violate the laws | 12/31/2001 | 1SS |

| | | | |
|---|---|---|---|
| | of the United States with respect to securities and wire fraud | | |
| 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 2 | Securities fraud, aiding and abetting | 12/31/2001 | 2SS |

■ See Additional Counts of Conviction

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

■ The defendant has been found not guilty on counts 42SS-50SS

■ Count(s) 3SS-6SS, 15SS, 21SS, 30SS, and 33SS ☐ is ■ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments are imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

October 23, 2006
Date of Imposition of Judgment
/s/ Sim Lake
Signature of Judge

Sim Lake, United States District Judge
Name and Title of Judge
October 25, 2006
Date

DEFENDANT: **JEFFREY K. SKILLING**
CASE NUMBER: **4:04CR00025-002**

## ADDITIONAL COUNTS OF CONVICTION

| Title & Section | Nature of Offense | Offense Ended | Count |
|---|---|---|---|
| 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 2 | Securities fraud by omitting or making untrue statements of material facts in Enron's annual Forms 10-Q and 10-K, quarterly filings, aiding and abetting | 03/30/2000 | 14SS |
| 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 2 | Securities fraud by omitting or making untrue statements of material facts in Enron's annual Forms 10-Q and 10-K, quarterly filings, aiding and abetting | 08/14/2000 | 16SS |
| 15 U.S.C. §§ 78j(b) and 78ff and 18 | Securities fraud by omitting or making untrue statements of | 11/14/2000 | 17SS |

| | | | |
|---|---|---|---|
| U.S.C. § 2 | material facts in Enron's annual Forms 10-Q and 10-K, quarterly filings, aiding and abetting | | |
| 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 2 | Securities fraud by omitting or making untrue statements of material facts in Enron's annual Forms 10-Q and 10-K, quarterly filings, aiding and abetting | 04/02/2001 | 18SS |
| 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 2 | Securities fraud by omitting or making untrue statements of material facts in Enron's annual Forms 10-Q and 10-K, quarterly filings, aiding and abetting | 05/15/2001 | 19SS |
| 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 2 | Securities fraud by omitting or making untrue statements of material facts in Enron's annual Forms 10-Q and 10-K, quarterly filings, aiding and abetting | 08/14/2001 | 20SS |

| | | | |
|---|---|---|---|
| 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 2 | Securities fraud in presentations to Securities Analysts and Rating Representatives, aiding and abetting | 01/22/2001 | 22SS |
| 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 2 | Securities fraud in presentations to Securities Analysts and Rating Representatives, aiding and abetting | 01/25/2001 | 23SS |
| 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 2 | Securities fraud in presentations to Securities Analysts and Rating Representatives, aiding and abetting | 03/23/2001 | 24SS |
| 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 2 | Securities fraud in presentations to Securities Analysts and Rating Representatives, aiding and abetting | 04/17/2001 | 25SS |
| 15 U.S.C. §§ 78j(b) and 78ff and 18 | Securities fraud in presentations to Securities Analysts and | 07/12/2001 | 26SS |

| | | | |
|---|---|---|---|
| U.S.C. § 2 | Rating Representatives, aiding and abetting | | |
| 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 2 | False statements to Auditors in Annual Representation Letters, aiding and abetting | 03/13/2000 | 31SS |
| 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 2 | False statements to Auditors in Annual Representation Letters, aiding and abetting | 02/23/2001 | 32SS |
| 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 2 | False statements to Auditors in Quarterly Representation Letters, aiding and abetting | 08/11/2000 | 34SS |
| 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 2 | False statements to Auditors in Quarterly Representation Letters, aiding and abetting | 11/13/2000 | 35SS |
| 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 2 | False statements to Auditors in Quarterly Representation Letters, aiding and abetting | 05/15/2001 | 36SS |
| 15 U.S.C. §§ 78j(b) | Insider trading, by engaging in | 09/17/2001 | 51SS |

| | |
|---|---|
| and 78ff and 18 U.S.C. § 2 | acts, practices, and courses of business which would and did operate as a fraud and deceit upon members of the investing public in connection with the purchase or sale of securities, and while in possession of material non-public information, the defendant sold shares of Enron stock, and aiding and abetting |

DEFENDANT: **JEFFREY K. SKILLING**
CASE NUMBER: **4:04CR00025-002**

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 292 months.

This term consists of ONE HUNDRED TWENTY (120) MONTHS, as to each of Counts 2SS and 14SS, to run consecutive, followed by FIFTY-TWO (52) MONTHS as to each of Counts 1SS, 16SS-20SS, 22SS-26SS, 31SS-32SS, 34SS-36SS, and 51SS, to run concurrent with each other and consecutive to Counts 2SS and 14SS, for a total of TWO HUNDRED NINETY-TWO (292) MONTHS.

☐ See Additional Imprisonment Terms.

■ The court makes the following recommendations to the Bureau of Prisons: That the defendant be designated to a facility close to FCI Butner, North Carolina, as possible. *See attached sealed Court Order Recommending Prison Designation (October 24, 2006), for Bureau of Prisons only.

☐ The defendant participate in the Comprehensive Residential Drug Abuse Treatment Program during incarceration.

☐ The defendant is remanded to the custody of the United States Marshall for this district:

☐ at __________ ☐ a.m. ☐ p.m. on ______________.

☐ as notified by the United States Marshall.

■ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on ______________.

■ as notified by the United States Marshall.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

______________________________________________

______________________________________________

______________________________________________

Defendant delivered on ____________ to __________ at __________, with a certified copy of this judgment.

______________________
United States Marshall

By ______________________
Deputy United States Marshall

DEFENDANT: **JEFFREY K. SKILLING**
CASE NUMBER: **4:04CR00025-002**

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years .

This term consists of THREE (3) YEARS as to each of Counts 1SS, 2SS, 14SS, 16SS-20SS, 22SS-26SS, 31SS-32SS, 34SS-36SS, and 51SS, to run concurrently, for a total of THREE (3) YEARS.

☐ See Additional Supervised Release Terms.

The defendant must report to the probation office in the district to which the defendant is released within the 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court. *(for offenses committed on or after September 13, 1994)*

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check if applicable.)

■ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

■ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

## STANDARD CONDITIONS OF SUPERVISION

■ See Special Conditions of Supervision

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependants and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10)the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11)the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12)the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13)as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirements.

DEFENDANT: **JEFFREY K. SKILLING**
CASE NUMBER: **4:04CR00025-002**

## SPECIAL CONDITIONS OF SUPERVISION

The defendant is prohibited from employment or acting in a fiduciary role during the term of supervision.

In the event, the Forfeiture and Restitution Agreement has not been satisfied, the defendant is required to provide the probation officer access to any requested financial information. If a fine or restitution amount has been imposed, the defendant is prohibited from incurring new credit charges or opening additional lines of credit without approval of the probation officer.

The defendant shall participate in a program, impatient or outpatient, for the treatment of drug and/or alcohol addiction, dependency or abuse which may include, but not be limited to urine, breath, saliva and skin testing to determine whether the defendant has reverted to the use of drugs and/or alcohol. Further, the defendant shall participate as instructed and as deemed necessary by the probation officer and shall comply with all rules and regulations of the treatment agency until discharged by the Program Director with the approval of the probation officer. The defendant shall further submit to drug-detection techniques, in addition to those performed by the treatment agency, as directed by the probation officer. The defendant will incur costs associated with such drug/alcohol detection and treatment, based on ability to pay as determined by the probation officer.

The defendant is required to participate in a mental health program as deemed necessary and approved by the probation officer. The defendant will incur costs associated with such program, based on ability to pay as determined by the probation officer.

DEFENDANT: **JEFFREY K. SKILLING**
CASE NUMBER: **4:04CR00025-002**

## CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

### TOTALS

| Assessment | Fine | Restitution |
|---|---|---|
| **$1,900** | | **$45,000,000**** |

A $100 special assessment is ordered as to each of Counts 1SS, 2SS, 14SS, 16SS-20SS, 22SS-26SS, 31SS-32SS, 34SS-36SS, and 51SS, for a total of $1900. ** See Schedule of Payments, Section F.

☐ See Additional Terms for Criminal Monetary Penalties.

☐ The determination of restitution is deferred until __________. An *Amended Judgment in a Criminal Case (AO 245C)*

■ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal payees must be paid before the United States is paid.

| Name of Payee | Total Loss* | Restitution Ordered | Priority or Percentage |
|---|---|---|---|
| Estimated; Refer to Stipulated Forfeiture and Restitution Agreement** | | $45,000,000 | |

☐ See Additional Restitution Payees.

| | | |
|---|---|---|
| **TOTALS** | $0.00 | $45,000,000 |

☐ Restitution amount ordered pursuant to plea agreement $ _________.

■ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the
☐ fine ☐ restitution

☐ the interest requirement for the
☐ fine ☐ restitution is modified as follows:

☐ Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **JEFFREY K. SKILLING**
CASE NUMBER: **4:04CR00025-002**

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are dues as follows:

A. ■ Lump sum payment of $ 1,900 due immediately, balance due:
   - ☐ not later than ________________, or
   - ☐ in accordance with ☐C, ☐D, ☐E, or ■F below; or

B ☐ Payment to begin immediately (may be combined with ☐C, ☐D, or ☐F below); or

C ☐ Payment in equal ______ installments of $ __________ over a period of ________, to commence _______ days after the date of this judgment; or

D ☐ Payment in equal ______ installments of $ __________ over a period of ________, to commence _______ days after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within __ days after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ■ Special instructions regarding the payment of criminal monetary penalties:
Make all payments payable to: U.S. District Clerk, Attn: Finance, P.O. Box 61010, Houston, TX 77208

** Due to the Stipulated Forfeiture and Restitution Settlement Agreement signed by the parties and the Court, on October 23, 2006, the Court has determined that the referenced mandatory restitution is proportionate to this defendant's culpability. Therefore, restitution is satisfied through this agreement. Final amount of restitution will be determined by the sale of assets referenced in the Settlement Agreement. Refer to additional special instructions in Section VII** in the Statement of Reasons.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

| **Case Number; Defendant and Co-Defendant Names (including defendant number)** | **Total Amount** | **Joint and Several Amount** | **Correspondi ng Payee, if appropriate** |
|---|---|---|---|

☐ See Additional Defendants and Co-Defendants Held Joint and Several.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court costs(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
As set forth in both the Stipulated Forfeiture and Settlement Agreement and Forfeiture Order executed by this Court on October 23, 2006.

☐ See Additional Forfeited Property.

Payments shall be applied in the following order: (1) assessment, (2) restitution, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, (8) costs, including cost of prosecution and court costs.

## APPENDIX S

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | §<br>§ | |
| v. | § | CRIMINAL NUMBER H-04-025-02 |
| JEFFREY K. SKILLING | §<br>§<br>§<br>§ | |

## MEMORANDUM OPINION AND ORDER

On October 10, 2006, Jeffrey K. Skilling filed a Motion for Bail Pending Appeal (Docket Entry No. 1120). After carefully considering the motion, the United State's response in opposition (Docket Entry No. 1128), and Skilling's reply (Docket Entry No. 1131), the court concludes that Skilling's motion for bond pending appeal should be denied.

### I. Background

On May 25, 2006, a jury found Skilling guilty of nineteen counts charged in the Second Superseding Indictment (SSI): conspiracy to commit securities and wire fraud (count 1), Raptors-related securities fraud (count 2), securities fraud involving financial statements filed with the SEC on March 30, 2000 (count 14), August 14, 2000 (count 16), November 14, 2000 (count 17), April 2, 2001 (count

18), May 15, 2001 (count 19), and August 14, 2001 (count 20)), securities fraud involving presentations made to securities analysts and rating agency representatives on January 22, 2001 (count 22), January 25, 2001 (count 23), March 23, 2001 (count 24), April 17, 2001 (count 25), and July 12, 2001 (count 26), false statements made to auditors in annual representation letters related to Enron's 1999 Form 10-K on March 13, 2000 (count 31), and Enron's 2000 Form 10-K on February 23, 2001 (count 32), false statements made to auditors in quarterly representation letters related to Enron's Form 10-Q for the second quarter of 2000 on August 11, 2000 (count 34), for the third quarter of 2000 on November 13, 2000 (count 35), and for the first quarter of 2001 on May 15, 2001 (count 36), and insider trading for the sale of 500,000 shares of Enron stock on September 17, 2001 (count 51).

## II. Standard of Review

"A convicted defendant has no constitutional right to bail." United States v. Olis, 450 F.3d 583, 585 (5th Cir. 2006) (citing United States v. Williams, 822 F.2d 512, 517 (5th Cir. 1987)). "[A]ny putative right to bail derives from 18 U.S.C. § 3143, which 'establishes a presumption against' its being granted." Id. Title 18 U.S.C. § 3143(b) allows release pending appeal only if the defendant can show by clear and convincing evidence that (1) the defendant is not likely to flee or pose a danger to the community, (2) the appeal is not for purposes of delay, (3) the appeal raises a substantial question of law or fact, and (4) the substantial question, if decided favorably to the defendant, is

> likely to result in – (i) a reversal, (ii) an order for a new trial, (iii) a sentence that does not include a term of imprisonment, or (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

18 U.S.C. § 3143(b)(1)(B). Although the court concludes that Skilling is not likely to flee or pose a danger to the community and that his appeal is not for purposes of delay, the court concludes that Skilling has not satisfied the third and fourth requirements for release pending appeal.

In United States v. Valera-Elizondo, 761 F.2d 1020 (5th Cir. 1985), the Fifth Circuit squarely addressed the correct interpretation of "raises a substantial question of law or fact likely to result in reversal or an order for a new trial." See 18 U.S.C. § 3143(b)(2). Focusing upon what "substantial question" means, the Fifth Circuit adopted the interpretation of § 3143(b)(2) announced by the Third Circuit in United States v. Miller, 753 F.2d 19 (3d Cir. 1985), subject to its own additional observations and those made by the Eleventh Circuit in United States v. Giancola, 754 F.2d 898 (11th Cir. 1985). Valera-Elizondo, 761 F.2d at 1025. The Fifth Circuit agreed with the Miller court that

> the proper interpretation of section 3143(b)(2) requires the making of two determinations by the court. First, the court must determine that the question raised on appeal is substantial, that is

> to say a question that is either novel, which has not been decided by controlling precedent, or which is fairly doubtful. Secondly, the court must determine whether that issue is sufficiently important to the merits that a contrary appellate ruling is likely to require reversal or a new trial.

Valera-Elizondo, 761 F.2d at 1023 (citing Miller, 753 F.2d at 23). The Fifth Circuit also agreed with the Giancola court's observation "that 'substantial question' means that the issue presented must raise a substantial doubt (not merely a fair doubt) as to the outcome of its resolution." Id. Finally, the Fifth Circuit held that "likely" as used in § 3143(b)(2) should be assigned "its ordinary meaning of 'more likely than not,'" id., and explained that the statutory requirement that the defendant demonstrate that the substantial question, if determined favorably for him on appeal, would likely result in a reversal or an order for a new trial means "reversal or an order for new trial on all counts on which imprisonment has been imposed." Id. (citing Giancola, 754 F.2d at 901, and Miller, 753 F.2d at 24). See also Morison v. United States, 108 S.Ct. 1837 (1988) (Rehnquist, Circuit Justice) (denying bond application for appeal to Supreme Court because petitioner had "not shown that his appeal is 'likely to result in reversal' with respect to all the counts for which imprisonment was imposed"); United States v. Bilanzich, 771 F.2d 292, 298 & n.6 (7th Cir. 1985) (quoting United States v. Powell, 761 F.2d 1227, 1233 (8th Cir. 1985) ("The substantial question must be one that would result in reversal or a new trial on all counts for which the defendant has been sentenced to prison. Otherwise, 'the reason for allowing bail on appeal, that a defendant should not be imprisoned under a legally erroneous sentence, disappears.' ")).

## III. Analysis

Skilling asserts that four appellate arguments raise substantial questions likely to result in the reversal of his convictions: (1) the impact of the Fifth Circuit's recent decision in United States v. Brown, 459 F.3d 509 (5th Cir. 2006), petition for rehearing and for rehearing en banc denied, No. 05-20319 (5th Cir. October 18, 2006); (2) the deliberate ignorance instruction; (3) jury bias; and (4) discovery and witness access issues. Having carefully reviewed all of Skilling's arguments and the controlling authorities on which he relies, for the reasons stated by the United States in its response to Skilling's motion for bail pending appeal (Docket Entry No. 1128), the court is not persuaded that Skilling's deliberate ignorance, jury bias, or discovery and witness access arguments raise substantial questions likely to result in a reversal or an order for new trial on any of his convictions. The court is persuaded, however, that the Fifth Circuit's recent decision in Brown, 459 F.3d at 509, raises a substantial question of law within the meaning of § 3143(b) that is likely to result in a reversal or an order for a new trial on Skilling's conviction for conspiracy charged in Count One. Because Brown was decided after Skilling's trial ended, and because Skilling argues that the application of Brown to facts of this case raises a substantial question likely to result in reversal or an order for new trial on each of his convictions, the court discusses each of Skilling's Brown-based arguments.

### A. United States v. Brown

In Brown the Fifth Circuit reviewed conspiracy and wire fraud convictions returned against defendants who participated in Enron's Nigerian barge transaction. The Nigerian barge transaction involved an agreement between executives at Enron and at Merrill Lynch to engage in a bogus sale of an interest in power-generating barges moored off the Nigerian coast. Andrew Fastow gave Merrill Lynch executives an oral guarantee that Enron would take Merrill Lynch out of the deal in six months and that Merrill Lynch would not lose money. The deal allowed Enron to book $12 million in earnings for the fourth quarter of 1999. The defendants were each charged with one count of conspiracy (18 U.S.C. § 371) and two counts of wire fraud (18 U.S.C. §§ 1343 and 1346). The indictment alleged two objects of the conspiracy: (1) the commission of wire fraud and (2) the commission of securities fraud by falsifying Enron's books and records. The alleged conspiracy to commit wire fraud and the substantive wire fraud counts were all based on two theories of wire fraud: (1) a scheme to deprive Enron of money or property; and (2) a scheme to deprive Enron of its intangible right to the defendants' "honest services."

On appeal the defendants argued that "honest services" wire fraud does not extend to the type of conduct with which they were charged, and the Fifth Circuit agreed. After reviewing the history of the wire fraud statute and prior case law, the Fifth

Circuit held that "honest services" fraud did not apply to the Nigerian barge transaction because

> where an employer intentionally aligns the interest of the employee with a specified corporate goal, where the employee perceives his pursuit of that goal as mutually benefitting him and his employer, and where the employee's conduct is consistent with that perception of the mutual interest, such conduct is beyond the reach of the honest-services theory of fraud . . .

Brown, 459 F.3d at 522. In other words, the Brown court held that an employee deprives his employer of "honest services" when the employee seeks to promote his own self-interest instead of his employer's interest. Because the barge transaction was intended to benefit Enron and not to secretly enrich the defendants at Enron's expense, the court held that it was outside the boundaries of 18 U.S.C. § 1346 even if it was dishonest, fraudulent, or wrongful. Skilling argues that

> [i]n the aftermath of Brown, there is no doubt that the 'honest services' issues in this case pose a 'substantial question' for appellate review . . . [and that] resolution of that question in Skilling's favor is . . . likely to result in reversal, thereby satisfying the requirements for a grant of bail pending appeal.[1]

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[1] Defendant Jeffrey Skilling's Motion for Bail Pending Appeal, Docket Entry No. 1120, p. 32.

## B. Conspiracy Conviction (Count One)

Skilling argues that

> [f]irst and foremost, the conspiracy count (Count One) is certain to be reversed on appeal, as it is virtually identical to the conspiracy count reversed by Brown. As in Brown, the indictment alleged three possible objects underlying the conspiracy: "honest services wire fraud, "money or property" wire fraud, or securities fraud. The Court's jury instructions allowed the jury to convict on any one of these three theories.

Citing Yates v. United States, 77 S.Ct. 1064 (1957), overruled on other grounds by Burks v. United States, 98 S.Ct. 2141 (1978), Skilling argues that

> because a general verdict form was used . . . all three theories to prove the conspiracy must be legally defensible for the conviction to stand on appeal. . . Because the "honest services" theory was plainly erroneous under Brown, the Count One conviction cannot stand.[2]

In Yates the Supreme Court considered a general verdict of guilt on a Smith Act conspiracy with two objects: (1) advocating the overthrow of the United States government and (2) organizing a society of persons to so advocate. The Court ruled that because the Smith Act's prohibition against organization referred only to the creation of the Communist Party, an event that occurred outside the applicable statute of limitations, the conspiracy conviction could not rest on that objective. Id. at 1067-1073. Rejecting the government's argument that the conviction could be affirmed on the advocacy objective, the Court held that a general verdict must be set aside where it "is supportable on one ground, but not on another, and it is impossible to tell which ground the jury selected." Id. at 1073. In Griffin v. United States, 112 S.Ct. 466 (1991), however, the Court clarified that Yates's broad pronouncement applies only when there is legal error in one of the bases for conviction. The Court explained that "legal error" means "a mistake about the law," not "a mistake concerning the weight or the factual import of the evidence." Id. at 474. Thus, where the error in a verdict is factual, as where one basis for conviction is unsupported by sufficient evidence, a guilty verdict " 'stands if the evidence is sufficient with respect to any one of the acts charged.' " Id. at 473 (quoting Turner v. United States, 90 S.Ct. 642, 654 (1970)).

---

[2] Id. at p. 33 (citing Brown, 459 F.3d at 523).

The United States argues that Brown does not require a reversal of Skilling's conspiracy conviction because the two cases are factually distinct.[3] As in Brown, the court instructed the jury in this case that it could convict Skilling of conspiracy by finding that he conspired, inter alia, to deprive Enron of its intangible right to honest services. Likewise, the jury returned only a general verdict making it impossible to tell on which of the various objects of the conspiracy the jury based Skilling's conviction. The court is persuaded therefore that application of Brown to Skilling's conspiracy conviction raises a substantial question that if resolved in his favor is likely to result in a reversal or an order for a new trial. See United States v. Pettigrew, 77 F.3d 1500, & n.2 (5th Cir. 1996) (distinguishing between general verdicts that rest on legally inadequate grounds that require reversal, and those that rest on factually inadequate grounds that do not require reversal).

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[3] United States' Response to Jeffrey K, Skilling's Motion for Bail Pending Appeal, Docket Entry No. 1128, pp. 14-15.

### C. Securities Fraud Convictions (Counts 2, 14, 16-20, and 22-26)

Skilling argues that his convictions for substantive securities fraud offenses charged in Counts 2, 14, 16-20, and 22- 26, are likely to be reversed on appeal because

> [f]or those counts, the jury was again permitted to convict on one of two different theories. First, it could have found Skilling guilty by his own conduct, if it concluded that he personally committed securities fraud. Or, because the Court gave a Pinkerton instruction, it could have found Skilling vicariously liable because of the conduct of a coconspirator. . . Again, given the general verdict, we do not know which theory the jury actually convicted on. However, because Brown invalidates the conspiracy conviction, it also

> "precludes the imposition of vicarious liability upon [Skilling] for the acts of [his] alleged co-conspirators." Thus, with the Pinkerton theory foreclosed as legally invalid, the rule in Yates compels the reversal of Counts 2, 14, 16-20, and 22-26.[4]

> The United States responds that

> [e]ven if Brown required reversal of Skilling's conviction on the conspiracy count, it does not require reversal of all his remaining convictions. Unlike the defendants in Brown, Skilling was not convicted of any substantive mail or wire fraud counts that relied on the honest services provision, and Brown therefore does not directly apply to any of the substantive counts.[5]

Citing United States v. Olano, 62 F.3d 1180, 1199 (9th Cir. 1995), cert. denied, 117 S.Ct. 303 (1996), the United States argues that Skilling is wrong in asserting that the court's Pinkerton instruction casts doubt on the validity of the substantive counts referenced in the instruction because "[s]ubstantial evidence at trial showed that Skilling affirmatively participated in the fraudulent acts that formed the basis for the securities fraud counts; thus, his convictions on those counts rested on his own conduct and not solely on the Pinkerton instruction."[6] The court agrees.

---

[4] Defendant Jeffrey Skilling's Motion for Bail Pending Appeal, Docket Entry No. 1120, pp. 33-34 (citing Yates, 77 S.Ct. at 1064, Brown, 459 F.3d at 518, and United States v. Kaiser, 660 F.2d 724, 732 (9th Cir. 1981) ("[b]ecause we cannot now be certain that the jury did not rely upon the vicarious liability theory, we must reverse")).

[5] United States' Response to Jeffrey K. Skilling's Motion for Bail Pending Appeal, Docket Entry No. 1128, p. 15.

The jury was instructed that Counts 2, 14, 16-20, and 22-26 charged Skilling, and only Skilling, with securities fraud. The jury was instructed that in order to find Skilling guilty on any of these counts

> you must find that the government has proved the following elements beyond a reasonable doubt.
>
> First: that the defendant knowingly did any one or more of the following . . .
>
> Second: that the defendant did so in connection with the purchase or sale of the securities of Enron Corporation;
>
> Third: that the defendant acted willfully and with the intent to defraud; and
>
> Fourth: that the defendant used or caused to be used, any means or instruments of transportation or communication in interstate commerce, or the mails, or the facilities of a national securities exchange, in furtherance of the fraudulent conduct.[7]

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[6] Id. at pp. 15-16.

[7] Jury Instructions, Docket Entry No. 960, pp. 28-29.

Because the Brown court held that the honest services theory of wire fraud does not extend to the circumstances at issue in that case, and because the substantive charges at issue in Brown were charges for wire fraud that were based, inter alia, on the honest services theory, the Brown court reversed not only the defendants' convictions for conspiracy, but also their convictions for the substantive wire fraud offenses. 459 F.3d at 517 ("Because we hold that the honest-services theory of wire fraud does not extend to the circumstances as contended by the Government, we vacate the conspiracy and wire-fraud convictions."). Because Counts 2, 14, 16-20, and 22-26 charge Skilling with securities fraud, and because deprivation of honest services was never offered as a basis for conviction on these or any other securities fraud counts, the Brown holding does not by itself raise a substantial question likely to require reversal or an order for new trial on Skilling's convictions for these counts. Nor is the court persuaded that the inclusion of these securities fraud counts in its Pinkerton instruction raises a substantial question likely to result in reversal or an order for a new trial.

The court's Pinkerton instruction informed the jury that if it found a defendant guilty of the conspiracy charged in Count One and if it found

> beyond a reasonable doubt that during the time the defendant was a member of that conspiracy, other conspirators committed the [securities fraud] offenses [charged] in Counts 2·and 14, 16-20, and 22-29 in furtherance of or as a foreseeable consequence of that

> conspiracy, then you may find the defendant guilty of Counts 2 and 14, 16-20, and 22-29, even though the defendant may not have participated in any of the acts which constitute the offenses described in those Counts of the Indictment.[8]

See Pinkerton v. United States, 66 S.Ct. 1180, 1184 (1946). See also United States v. Thomas, 348 F.3d 78, 84-85 (5th Cir. 2003), cert. denied, 124 S.Ct. 1481 (2004). While it is axiomatic that a defendant who is acquitted of conspiracy, or whose conspiracy conviction is reversed on appeal, cannot be held vicariously liable for substantive offenses committed by an alleged co-conspirator, see United States v. Rosas-Fuentes, 970 F.2d 1379, 1383 (5th Cir. 1992), Skilling has failed either to argue or to cite any evidence showing that his convictions for the offenses charged in Counts 2, 14, 16-20, and 22-26 were based on the conduct of an alleged co-conspirator as allowed by the court's Pinkerton instruction instead of on his own conduct. Consequently, the court is not persuaded that Skilling has made a showing that the general verdicts on these counts of conviction must be set aside because they rest on two grounds, one that is legally supportable and one that is not, "and it is impossible to tell which ground the jury selected." Yates, 77 S.Ct. at 1073.

Because Skilling has failed to cite any evidence from which the court could conclude that the jury convicted him of any substantive offense based on the United States' deprivation of honest services theory, or that his convictions for the securities fraud offenses charged in Counts 2, 14, 16-20, and 22-26 were based not on his own conduct but, instead, on the conduct of a co-conspirator, the court is not persuaded that application of the Fifth Circuit's holding in Brown or the Supreme Court's holding in Yates to these convictions is capable of raising a substantial question that if resolved in his favor is likely to result in a reversal or an order for a new trial on any of these counts of conviction. See Yates, 77 S.Ct. at 1073 (requiring reversal only where it is impossible to tell on which of two conflicting grounds the jury based its decision to convict). Accord Olano, 62 F.3d at 1199 (stating that when faced with a Pinkerton instruction precluded by an erroneous conspiracy charge, a conviction can nevertheless be affirmed if the court finds beyond a reasonable doubt that the jury convicted the defendant based on his own conduct and not on the conduct of an alleged co-conspirator). See also United States v. Castaneda-Cantu, 20 F.3d 1325, 1335 (5th Cir. 1994) (recognizing that a Pinkerton charge can be superfluous).

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[8] Id. at pp. 20-21.

### D. False Statement Convictions (Counts 31-32, 34-36)

Skilling argues that the false statements to auditors convictions in Counts 31-32 and 34-36 are also likely to be reversed because

> although the Court's Pinkerton instruction did not apply to these counts, the Court gave a related instruction on aiding and abetting . . .

> Given the close similarities between this instruction and the Pinkerton instruction, and given that the broad conspiracy allegation was the overarching factual foundation of the Task Force's case, there is a strong likelihood that the invalid conspiracy count had a prejudicial spillover effect on Counts 31-32 and 34-36.[9]

Skilling cites no authority for this argument.

As noted in United States v. Bullock, 451 F.2d 884 (5th Cir. 1971), the aiding and abetting statute, 18 U.S.C. § 2,

> is an alternative charge in every count, whether explicit or implicit, and the rule is well-established, both in this circuit and others, that one who has been indicted as a principal may be convicted on evidence showing that he merely aided and abetted the commission of the offense.

Id. at 888. See also United States v. Walker, 621 F.2d 163, 166-167 (5th Cir. 1980), cert. denied, 101 S.Ct. 1707 (1981). Moreover, in Nye & Nissen v. United States, 69 S.Ct. 766 (1949), the Supreme Court held that aiding and abetting had a broader application than the rule announced in Pinkerton, 66 S.Ct. at 1180. In Nye and Nissan Justice Douglas found that although there was not enough evidence to convict the defendant of the substantive counts, there was circumstantial evidence wholly adequate to support the jury's finding that the defendant aided and abetted in the commission of the offenses:

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[9] Defendant Jeffrey Skilling's Motion for Bail Pending Appeal, Docket Entry No. 1120, p. 34.

> We see therefore no reason to exculpate him as an aider and abettor. There was no inadequacy in the charge to the jury on that theory. Nor was the submission in conflict with Pinkerton . . . The rule of that case does service where the conspiracy was one to commit offenses of the character described in the substantive counts. Aiding and abetting has a broader application. It makes a defendant a principal when he consciously shares in any criminal act whether or not there is a conspiracy. And if a conspiracy is also charged, it makes no difference so far as aiding and abetting is concerned whether the substantive offense is done pursuant to the conspiracy. Pinkerton . . . is narrow in its scope. Aiding and abetting rests on a broader base; it states a rule of criminal responsibility for acts which one assists another in performing. The fact that a particular case might conceivably be submitted to the jury on either theory is irrelevant. It is sufficient if the proof adduced and the basis on which it was submitted were sufficient to support the verdict.

69 S.Ct. at 770. For these reasons the court is not persuaded that Skilling's argument that the "close similarities" between the aiding and abetting and

the Pinkerton instructions[10] raises a substantial question likely to result in a reversal or an order for a new trial on these counts.

## E. Insider Trading Conviction (Count 51)

Asserting that the conspiracy charged in Count One was the inside information on which Skilling allegedly traded the 500,000 shares of Enron stock on September 17, 2001, Skilling argues that "the insider trading conviction in Count 51 is also infirm in light of Brown."[11] Asserting that the United States made this explicit by telling the jury in closing argument "you can conclude, based on the evidence of the conspiracy that's been presented to you, at key periods in time whether Mr. Skilling had information that he used to sell his stock,"[12] Skilling argues that "the failure of Count One also undermines the jury's conviction on Count 51."[13] Because Skilling does not argue that the jury was improperly instructed on the insider trading counts, and because Yates requires a general verdict to be set aside only where it "is supportable on one ground, but not on another, and it is impossible to tell which ground the jury selected," 77 S.Ct. at 1073, the court is not persuaded that the United States' reference to the conspiracy in closing argument raises a substantial question likely to result in a reversal or an order for new trial on his conviction for insider trading charged in Count 51. Even assuming without deciding that the United States' reference to the conspiracy in closing argument presented the jury an impermissible basis for convicting Skilling of insider trading charged in Count 51, in light of the jury's decision to convict Skilling for securities fraud charged in Counts 2, 14, 16-20, and 22-26 and for making false statements to auditors charged in Counts 31-32 and 34-36, the court is not persuaded that the jury could possibly have based its decision to convict him on Count 51 solely on the United States' reference to the infirm conspiracy in its closing argument.

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[10] Reply in Support of Defendant Jeffrey Skilling's Motion for Bail Pending Appeal, Docket Entry No. 1131, p. 22.

[11] Defendant Jeffrey Skilling's Motion for Bail Pending Appeal, Docket Entry No. 1120, p. 35.

[12] Id. at p. 36 (quoting Trial Tr. 18,253:9-15).

[13] Id.

## IV. Conclusions and Order

For the reasons explained above, the court concludes that Skilling has failed to satisfy the statutory requirements for release pending appeal. Accordingly, Jeffrey K. Skilling's Motion for Bail Pending Appeal (Docket Entry No. 1120) is **DENIED**.

**SIGNED** at Houston, Texas, on this 23rd day of October, 2006.

SIM LAKE
UNITED STATES
DISTRICT JUDGE

# APPENDIX T

*The fall of Enron; Enron's recent troubles*

THE HOUSTON
CHRONICLE

Tuesday, December 04, 2001

3 STAR EDITION

Section Business, page 6

By Staff, Associated Press

Aug. 14

Jeff Skilling, who served as CEO for six months, steps down for personal reasons. Ken Lay assumes the role of CEO. Enron's stock closes at $ 42.93, off from a 52-week high of around $ 85.

Oct. 16

Enron reports a $ 638 million third-quarter loss and discloses a $ 1.2 billion reduction in shareholder equity, partly related to losses by partnerships run by Chief Financial Officer Andrew Fastow.

Oct. 22

Enron acknowledges Securities and Exchange Commission inquiry into a possible conflict of interest related to the company's dealings with those partnerships.

Oct. 24

Andrew Fastow is replaced as chief financial officer by Jeff McMahon.

Oct. 25

Enron draws on $ 1 billion credit line, hoping to provide liquidity and restore investor confidence.

Oct. 31

The Securities and Exchange Commission announces it has begun a formal investigation, allowing it to subpoena evidence.

Enron adds William Powers Jr., dean of the University of Texas School of Law, to the board to chair a special committee dealing with the investigation.

Nov. 6

Enron's stock price drops below $ 10 a share after reports the financially troubled energy trader was seeking additional financing to shore up confidence.

Nov. 8

Enron revises its financial statements for the past five years to account for $ 586 million in losses. The losses are related to a number of complex partnerships, including several under investigation by the Securities and Exchange Commission.

Nov. 9

Dynegy announces an agreement to buy its much-larger crosstown rival for more than $ 8 billion in stock. It promises investments in the near term to stabilize Enron.

Nov. 14

After criticism by employees, Lay says he will not take a $ 61 million severance payment he would be due if the merger closes.

Enron says it planned sell business units valued around $ 8 billion over the next year, using the proceeds to pay down debt.

Nov. 20

Shares drop 23 percent to $ 6.99 after news the company had to restate its third-quarter earnings and would need to pay off or renegotiate a $ 690 million debt after stock was downgraded on Nov. 12. Officials from both Enron and Dynegy say the merger is not in trouble.

A group of Enron employees sue Enron, claiming the company recklessly endangered their retirement funds, which was tied up in Enron stock.

Nov. 21

Enron reaches critical agreement to extend the $ 690 million debt obligation.

Nov. 28

Dynegy pulls out of deal to buy Enron, citing "breaches of representations" by Enron and exercises its option to buy Enron's 16,500-mile-long Northern Natural Gas pipeline.

Enron's debt is downgraded to junk status, leading to a temporary halt in the company's EnronOnline platform, which handles about 60 percent of its trading business or $ 2.8 billion daily.

Enron's shares plunge to below $ 1 amid the heaviest single-day trading volume ever for a New York Stock Exchange or Nasdaq-listed stock.

Nov. 29

Enron stops sending cash to its overseas operations, forcing its Enron Europe operations to file for creditor protection and lay off 1,100 employees.

The New Power Co., an Enron Corp. spinoff entering the deregulated Texas electric market, reminds consumers it is an "independent and separately held company from Enron" with its own board, financial resources and management team.

A congressional panel launches an investigation into Enron's business practices.

Dec. 2

Enron files for bankruptcy protection, the largest in U.S. history. Enron sues Dynegy for dropping out of merger, seeking damages of at least $ 10 billion. The suit asks a judge to block Dynegy from taking possession of the Northern Natural Gas pipeline.

Dec. 3

Dynegy countersues Enron over the right to acquire the pipeline.

Enron starts cutting 4,000 employees, mostly in the Houston headquarters. The company arranges up to $ 1.5 billion of debtor-in-possession financing.

# APPENDIX U

*America's New War Against Enron Lawyers go gunning for corporate terrorists*

HOUSTON PRESS (Texas)

Thursday, December 13, 2001

Section: News/Columns

By Tim Fleck

Its former leaders are in seclusion, protected by elite bodyguards and high-tech security systems. Only a hard-core band of followers continues to staff its shattered shell, as a chorus of condemnation around the world denounces unethical strategies that wreaked havoc on tens of thousands of unsuspecting citizens. Any day now, the Bush administration will be adding another name -- Enron -- to the list of corporate states sponsoring economic terrorism.Al Qaeda killed more than 3,000 U.S. civilians in minutes. Enron's energy traitors were a bit more humane and self-serving. Not having the stuff of suicide bombers, Enron's executive pilots took full advantage of golden parachutes to bail out of their high-flying corporate jet after setting the craft on a course to financial oblivion. In a business time frame, Enron pancaked faster than the twin towers.

CEO Ken Lay and former top execs Jeff Skilling and Andrew Fastow landed safely at their River Oaks redoubts equipped to hold out indefinitely and in high style. Employees and shareholders found themselves grasping retirement accounts and portfolios stuffed with near worthless stock.

The provisional leadership running the now bankrupt corporation then put less valuable workers out on the streets with no severance, three weeks before Christmas. Those needed to staff the gutted enterprise got enough C rations -- cash bonuses -- to stay fed and at their posts for a while longer. They had to promise to hunker down for 90 days, no matter how bad things get.

But the victims aren't taking it lying down. Since September 11, America's mind-set of "don't get mad, get even" applies to the home front as well as Afghanistan. And a whole army of well-trained court warriors in Houston is just itching to try its hand at smoking the Enron villains out of their comfy financial caves and tunnels. These moolah-hideen are more commonly known as plaintiff's lawyers.

Formerly the object of Republican scorn as tort tarts sucking the blood of big business, attorneys are suddenly right up there with firefighters as heroes, protecting the common man from Lay and company. Their motto: "Betcha can't eat just one."

The Houston law firm of Pearson & Pearson knew just how to go about recruiting troops with the right stuff. It issued communiques on country-tough KIKK radio, soliciting victims for lawsuits. The response was immediate and overwhelming.

"I just got off the phone with one of the company's pilots," reports Jim Pearson, a partner in the firm. "Those guys had their own air force. He told me, 'If you send me a packet out today, this is where I live, but I don't know how long I'll be here.' " The pilot's life savings had evaporated over the last six months.

"They've been hit on all fronts," says the attorney. "If it was just getting fired, that would be one thing. And if it was just losing money in the stock market like a bunch of people have done this year, that would be another thing. It's like getting cut off at the head and feet at the same time. You're just left with the torso."

Pearson's firm is working with mega-plaintiff's attorney George Fleming to structure mass tort cases against Enron and its leadership. Those differ from class-action lawsuits in that they seek individual awards for clients, rather than a lump sum settlement to be divvied up equally among participants. (What's also interesting, the Fleming team includes George Bishop, freshly released from prison for tax evasion, now knocked down from influential lawyer to paralegal.)

After taking the temperature of Enron's victims, Pearson says the Enron executives are wise to take security precautions.

"I don't want to see these men hurt, but put yourself in these employees' place. . . Their entire life has just vaporized, and I don't know what happens when your life vaporizes. Each person reacts differently, and that's a lot of people to anticipate a lot of reactions about."

One of the first Houston attorneys to hoist a red flag at Enron was veteran litigator David Berg, Mayor Lee Brown's appointee who chaired the Houston Area Water Corporation. Berg came under intense pressure last winter from city officials and lobbyists to award Enron subsidiary Azurix a water purification plant contract potentially valued in the multibillions. Berg dug in his heels and with the support of other board members successfully opposed Azurix.

Berg says he detected disturbing cracks in the corporation's financial facade during negotiations. He recalls Enron chairman Lay balking when Berg demanded that the company guarantee Azurix's billion-dollar debt.

"What that said to me was, here's a company with a $90 billion cap that can't figure out a way to consolidate that loss onto their financial statement and cover it, and then get a job that would have been worth $3 billion ultimately."

Berg had just finished negotiating a legal settlement in which Marriott absorbed a $425 million payout without any effect on its stock value. Berg reasoned that Enron -- if its financial statement was accurate about assets -- shouldn't have hesitated to cover Azurix's debt. He concluded that company officials were hiding something.

Since Enron's collapse, the lawyer says, several former Azurix supporters have now issued apologies to him. Perhaps the most graphic occurred two weeks ago outside La Griglia restaurant. There Berg happened to encounter City Attorney Anthony Hall and former Azurix lobbyist Dave Walden. While Hall made bowing gestures, Walden actually stooped over and feigned kissing the attorney's buttocks.

Berg is now handling employee shareholder suits against the Enron leaders and believes criminal action may be in the pipeline as well. "There are four U.S. attorney's offices interested in this case," he says, "and the one in Los Angeles has had its stinger out since the energy crisis."

Tom Cunningham of Cunningham, Darlow, Zook & Chapoton says his law firm already has filed class-action suits on behalf of shareholders who purchased Enron stock after October 1998, the time that the company began issuing allegedly deceptive financial statements. One such suit accuses Enron, Lay, Skilling and Fastow of, among other things, fraudulently scheming to induce shareholders to buy at artificially inflated prices. The firm also represents longtime employees who had their retirement funds wiped out in the collapse.

Clients' emotions "run the gamut from total despair to total anger," says Cunningham. One secretary, who never graduated from college, worked her way up in the company but lost everything. Another client lost $1 million, says Cunningham, "and he's pissed, very angry."

That anger is directed at more than just Enron. Another high-profile Houston attorney, Rusty Hardin, is defending Enron's accounting firm, Arthur Andersen, which has come under fire for failing to disclose the company's questionable finances. Since Arthur Andersen is one of the few parties with assets intact, it's a magnet for shareholder and employee litigation.

"All of a sudden the person that everybody was filing suit against [Enron] is in bankruptcy," Hardin says. "What all the plaintiffs are obviously doing is thrashing around looking for what deep pocket is left standing and, 'Oh, over there -- it's Arthur Andersen.' "

Hardin figures that before the Enron dust settles, almost every major Houston law firm will be involved on one side or another.

"You have to assume there are large numbers of plaintiff's lawyers all over the city, state and country licking their lips," says Hardin. "You could take the trial section of the Houston Bar Association and just start throwing pins blindly."

One attorney representing victims cites a rumor that company liability insurance will not cover the personal assets of Enron board members and executives.

"That could be the hot story before it's over," says the lawyer wistfully. "They would be naked. And these are men with a lot of money, and that is not a good place to be. If that came to pass, it would change the landscape dramatically."

It would also provide some small measure of holiday cheer for thousands of unemployed Enron workers who have little else to celebrate.

# APPENDIX V

## *The Perfect Storm - That's How Enron Describes The Forces That Sunk Its Stock. But It Caused Its Own Disaster-through Greed, Arrogance, and a Failure To Learn from the Past.*

TEXAS MONTHLY, INC.

January, 2002

Section Behind The Lines, page 7

By Mimi Swartz

"IT'S NOTHING BUT A HOUSE OF CARDS." If you lived in Houston, you heard that description of Enron every once in a while -- around the watercoolers at the downtown banks or at dinner parties where the guests worked for the competition. It was usually said with a knowing and bemused shake of the head, as if the speaker was used to being ignored. I first heard the statement more than two years ago: I was walking my dog and got into a conversation with a neighbor, an accountant who knew somebody at Enron. "House of cards," he said of the company, shaking his head and shrugging. Then he went back to cutting his grass with a rusted manual mower, an activity any high-flying Enron employee would have scoffed at.

As I write this, the sound of another neighbor's laughter is wafting into my home office. I'm glad he's laughing: He had worked at Enron for just a few years but on Monday, December 3, had been sent packing, along with about 3,999 fellow employees, when the company declared bankruptcy. I had watched the construction of his large, graceful Craftsman-esque home with some envy and, this year, had thought how nice it would have been to have paid someone, as he did, to hang all the Christmas lights that are de rigueur in our neighborhood. Now I'm not so envious, but the Enron story continues to enthrall me, partly because it is such a spectacular tale of ambition and failure and hubris and greed but mostly because it is such a Houston story, incontestably borne of the city's addiction to risk and its passion for the stunning highs and equally awesome crashes risk takers create.

It was the growing ubiquity of the "house of cards" line, in fact, that drew me to the Enron story I wrote in this magazine's November issue. When I started working on the piece, everyone told me the same thing: "No one will talk to you." When I asked why, the reason was either "because they're really, really rich and don't want to" or "because they signed confidentiality agreements and can't." A few people did talk to me -- most on deep, deep background, but former CEO Jeff Skilling on the record -- and I wrote the story anyway. When the magazine went to press, in mid-October, Enron's stock, which had been worth

$ 80 a share in January, had fallen to $ 35. No one thought it could possibly get any worse.

It could. In early December it bottomed out at 25 -- that's cents, not dollars. The meanest corporation in America had a fall that was consistent with its character -- fast, brutal, and humiliating. As its critics had suggested, Enron's finances were not as solid as advertised -- like many companies, Enron had been stretching the edge of the accounting envelope to keep debt off its balance sheets. But Enron, hooked on its own cleverness, did it to excess. As the company's stock price tumbled with each new revelation -- a third-quarter loss of $ 618 million, a $ 1.2 billion loss in shareholder equity, the overstating of the past five years' profits to the tune of $ 586 million, the sudden departures of its treasurer and its CFO -- Enron's reputation followed the stock price down. My phone started ringing off the wall with pleading calls from people who hadn't wanted to talk before, soon to be joined by those who wanted a piece of the journalistic action. "This is bigger than *Barbarians at the Gate!*" I heard more than once, along with the question, first raised by a reporter from *People* on a drizzly Sunday morning, "How could this happen?"

How it happened was actually not that mysterious: Only a few cynics and party poopers had noticed that, during the nineties, Enron had ceased to be a pipeline company and was operating sort of like an unregulated bank, funding trades and deals of every kind imaginable. It had shed hard assets in favor of intellectual capital, which was fine as long as times were good. But when a couple of deals went sour -- a venture into broadband and the California electricity-deregulation adventures -- Enron's credibility started to slip on Wall Street. Because Enron had been selling power plants and pipelines like mad, the company had insufficient assets to use as collateral to raise more money (CEO Skilling, who departed so abruptly last summer after only six months in the top job, had been preaching for years that hard assets were nothing but a drag on a company's bottom line). And more money it desperately needed, to satisfy margin calls on its trading operations. Hence, no customers, no lenders, and no cash flow. Since the generation of goodwill had never been a priority at Enron, the company got no mercy either. My fifth-grade son and I were reading *The Call of the Wild* during this period. It was instructive.

Enron spinners christened the disaster "The Perfect Storm," suggesting that the company had been hit by a series of catastrophic coincidences. But as one lawyer close to the company remarked dryly, "Enron made its own weather." That certain executives might have been incomprehensibly greedy; that arrogance and intellectual intimidation might have silenced anyone, inside or outside the company, who asked hard questions; that board members and top administrators had ignored warnings that Enron might have finally innovated itself beyond the brink -- those were ethical explorations that were raised too late. The truth was, precious few people complained about Enron's novel financing when the stock price was $ 90 a share -- few journalists, few analysts, few executives, and certainly none of the company's eager investors. I wondered whether Jeff Skilling, hailed not so long ago by *Worth* magazine as one of the best bosses in America, was stunned at the speed with which he was exiled to the other side of the looking glass.

Probably not. Introspection has never been a quality prized by corporate executives or, for that matter, Texans. Least of all did anyone want to hear comparisons to the eighties, especially if you factored in other bad news -- the precarious state of Continental Airlines or the pending absorption of Compaq by Hewlett-Packard. The Enron scenes were discomfittingly evocative: the tearful employees who had lost their health insurance and retirement savings carrying their meager belongings from the building in cardboard boxes (more-prosperous Enronians used their expensive ergonomic desk chairs as luggage carts); the release of legal attack dogs Joe Jamail (representing Enron's most favored attorneys, Vinson and Elkins) and Steve Susman (representing Enron itself); the descent of the national press, like relatives at the funeral of a rich uncle they'd never much cared for in life. The day Dynegy chairman Chuck Watson announced the Hail Mary Merger, I watched Enron founder Ken Lay seated onstage. Watson looked like a linebacker, but in the old days, Lay, a man of slight build, always seemed much larger, cloaked as he was in his spectacular wealth and power. Now, when introduced, he stooped over to pull up his socks, suddenly an old man at 58. It made me long for those stories of the exotic car shows that took place in front of Enron on bonus day and the tales of employees engaging in wild sex in glass-walled offices.

But my nostalgia was wasted, because character is destiny, and when all else failed and the money was gone, the arrogance and meanness remained. When the Dynegy merger was first announced in early December, Enron employees told each other, "We'll own them in weeks." It was as if Dynegy, the good-natured jock, hadn't noticed that its gorgeous cheerleader was high maintenance and on the make; when Dynegy pulled out of the deal and Enron sued for $ 10 billion, alleging Dynegy had forced Enron into bankruptcy, I felt like a chump for being surprised. And, yes, Enron traders held the company up for millions to stay in their jobs, while twenty-year employees got $ 4,500 severance checks, and yes, the company filed for bankruptcy in New York specifically to keep laid-off employees from storming the courthouse. That threat was real: Skilling's picture turned up alongside Osama bin Laden's on "Wanted" posters inside the company headquarters, and both Skilling and Lay hired personal security. (I knew I had been infected by the Enron virus myself when I called an Enron source and asked only half-jokingly whether he wanted to sell me his house.)

So now we have the Enron miniseries to look forward to: Can the company survive and, for that matter, should it? Will Enron's much-vaunted White House connections be of any help whatsoever, or have they evaporated too? Will 401(k)'s be retooled, so that employees won't have to stand by and watch their life savings vanish, as Enron's did? Will lawsuits against Enron be allowed to go forward during the bankruptcy proceedings? Will the fallout extend to Enron's lawyers, Vinson and Elkins, and its accountants, Arthur Andersen? Who, if anyone, will go to jail?

Finally, there is my favorite question: When will Houston ever learn? The other night, KPRC-TV hosted an Enron special -- "Boom to Bust" it was called -- that featured several employees who had been fired that day. Dressed in the company's signature khakis and jeans, the assembled appeared shell-shocked and contrite. "I learned a good lesson in ethics," one beefy young man assured the viewers. A few well-meaning job counselors joined the show, and Becky Collums, a motherly type with a business called CC Staffing, brought up the cliche about doors closing and windows opening: "People can look at this as an opportunity to recreate themselves," she urged sweetly. Just a few months ago, she would have been laughed out of the Enron building. These refugees gave her their full attention.

# APPENDIX W

## *Dems' New Year Vow: Oust GOP Judges Candidate recruits include a former Republican jurist*

HOUSTON PRESS (Texas)

Thursday, January 3, 2002

Section: News/Columns

By Tim Fleck

This week Harris County Democratic Party chair Sue Schechter unveils what party officials hope will be the slate that breaks the Republicans' iron grip on county-wide judgeships. She's recruited the latest crop of candidates with a siren song based on the county's changing demographics, plus an expected surge of Hispanic voters in the coming election.The last big judicial wipeout for the county occurred in 1994, when Republicans ran the table on their Democratic opponents and virtually exterminated the opposition. Eight years later, a few brave Democrat hopefuls are signing up for the spring primary and banking on the notion that what went around then finally comes back around for them in 2002.

Part of the optimism comes from the election two years ago. One Democratic judge, Eric Andell, broke the 50 percent barrier in Harris County, and narrowly lost based on the vote in the 13 outlying counties of his appellate court district. Other Democratic judicial candidates came within several percentage points of winning even with scant campaign budgets.

University of Houston political scientist Dr. Richard Murray says the recent census confirmed previous projections that the county's Republican base is steadily eroding to the point that the two parties are nearing parity.

"In the last decade we had lost about 95,000 Anglo residents net in Harris County," notes Murray, "while we gained more than 100,000 African-Americans. Since Republicans are very dependent on the Anglo vote and get virtually no black vote, that switch of 100,000 going in opposite directions is quite meaningful."

The second factor is a November ballot that is expected to include two high-profile Hispanic Democrats, gubernatorial contender Tony Sanchez and Houston City Controller Sylvia Garcia, who's running for Precinct 2 county commissioner.

Murray figures that Sanchez, a multimillionaire banker from Laredo, will have plenty of money to work Harris County Hispanics, 60 percent of whom live in Precinct 2. The opportunity to elect the first Hispanic governor and county commissioner could prove a potent inducement to get out the Latino vote.

"We would expect heightened participation," says the professor, "and probably a bit more solid Democratic voting from Hispanics in 2002 because of the particular climate on the ballot."

Last summer, Schechter began meeting with interested lawyers to spread the message that the time was ripe to run for a bench. Criminal defense attorney Mike Charlton organized a group of lawyers to raise money to recruit criminal court candidates and help collect signatures to get them on the primary ballot.

Schechter based her sales pitch on Murray's figures and the vote totals from recent elections.

"We've all looked at the numbers and agree that if you just graph it out, then in 2002 we ought to be pushing across the line," says the Democratic chair. "Now, with no Bush at the top of the ticket, it looks very much like this could be very much like 1994, when Republicans swept out 19 Democratic judicial incumbents."

Some of the recruits, like Al Leal and Ruben Guerrero, are former judges who lost their jobs when the GOP wave swept through the local courthouses. Bruce Mosier ran a strong judicial race two years ago and is seeking a county civil court bench. Mitchell Contreras and Robert Hinojosa hope to ride the expected Hispanic surge to district court benches.

Another candidate, former criminal district judge Werner Voigt, drew the ire of fellow Republicans for his preference for probations, and was defeated in the party primary. Voigt also gained a certain notoriety by fatally shooting a homeless man in April 1997. The derelict was attacking the judge after Voigt tried to retrieve a briefcase stolen by the man on a downtown street. Voigt is back as a retooled Democrat seeking the 183rd District bench occupied by Joan Huffman. In a sign that some Democrats have trouble swallowing Voigt's "conversion," Ira Chenkin will oppose him in the primary.

If Republican judges are sitting ducks in 2002, they have yet to raise warning flags.

GOP consultant Allen Blakemore, who has an extensive stable of jurist clients, scoffs at Schechter's prediction of a Democratic breakthrough.

"I'm proud of Sue Schechter for finally doing her job as party chairman to convince some people to run," snipes Blakemore. "But she may be liable for deceptive trade practices. She will lead these poor souls to slaughter, and it's going to end up being a cruel joke."

Blakemore dismisses Andell's strong showing as a phenomenon based more on the personable judge's cross-party appeal than any genuine trend. He instead focuses on the defeat of well-funded, effective Democratic candidate Sofia Androgue as a better barometer of the relative party strengths.

"A lot of people are going to expend a lot of effort, and personal sacrifices are going to be made by these candidates, and they're not going to win," concludes Blakemore. As for that predicted Hispanic wave, the consultant is in no hurry to build a dike around his judges.

"It's just not there yet. Give 'em another six or eight years, and we can have this conversation. Not a chance this time."

"He only wishes that were true," retorts Schechter. "He's seen the same numbers we've seen. He knows his time has come."

It's an argument that won't get settled till we go to the polls next November.

Sympathy for the DevilThe Houston Chronicle has always had a problem getting down on hometown boys, even those whose standing has sunk as low as former Enron CEO Jeff Skilling's. While the paper's editors have taken to conveniently dropping their previous puff pieces on the energy banditos down the paper's memory hole (see News Hostage, by Richard Connelly, December 20), Chron reporters apparently find the ol' softball approach hard to break.On December 22, Laura Goldberg penned the sympathetic-to-a-fault front-pager headlined "Did No Wrong, Skilling Says." The piece is larded with nuggets like " 'The last two months have been the worst two months of my life,' he said, adding that he'd lost 14 pounds during the period."

About his responsibility to victimized workers and investors, Goldberg relayed Skilling's soul-searching "as the bags under his eyes should attest to, he noted, over decisions he made at Enron." Skilling's unchallenged explanations were that "we made the correct decisions given the information we had," and that he believed Enron was in excellent condition when he left.

The interview struck a never-never land note with Skilling's assertion that Enron was a success.

"We built a great company. We were doing great things. We were creating markets where markets didn't exist." According to the piece, Skilling explained that he had no monetary stake in several controversial investment partnerships, and that he left such financial details to "hundreds of highly qualified people to handle such matters."

At any moment, readers expected Skilling to launch into a Butterfly McQueen imitation: "I don't know nothin' about birthin' no corporations." Instead, he mimicked author Sebastian Junger by calling his former employer the victim of a perfect storm.

On the same day as Goldberg's piece, The New York Times published its own interview with Skilling, providing a very different view. The fourth paragraph states that Skilling sold off some of his company holdings shortly before the collapse, a tidbit the Chron never got around to mentioning. The Times story, by Richard Oppel Jr., also presents evidence that disputes Skilling's claims that he was unaware of the unusual financial transactions that led to the company's downfall. Oppel never gets around to describing Skilling's appetite, skin condition or sleeping habits.

Imagine if Osama bin Laden were a Houston homey and the Chron got an interview. We might learn how much weight bin Laden had lost as he agonized over the World Trade Center attack, how that persistent U.S. bombing had disturbed his slumber and put bags under his eyes. Finally, he'd insist he didn't know anything about running Al Qaeda -- that those sneaky assistants did all the bad stuff behind his back.

# APPENDIX X

*Your tar and feathers ready? Mine are*

THE HOUSTON
CHRONICLE

Friday, January 11, 2002

3 STAR EDITION

Section A, page 26

By Staff, Cragg Hines; Hines is a Houston Chronicle columnist based in Washington, D.C. (cragg.hines@chron.com)

ARI Fleischer, that simpering twit of a White House spokesman, urged Thursday that the Enron debacle not be turned into a partisan witch hunt. OK, Ari, let's make it a bipartisan witch hunt.

But all the news seems so Republican-specific at the moment. You know they're getting edgy at the White House when both President Bush and Fleischer - within about 30 minutes of each other - try to blame Enron Chief Executive Officer Ken Lay (the single largest contributor to Bush's political career) on Ann Richards. Whoever wrote that talking point needs to be sent to the correspondence pool. It, at least, was not a good day to try the line.

Let's wade right in on the Justice Department's criminal investigation. That would be the same Justice Department headed by Attorney General John Ashcroft, who it seems was one of many politicians who benefited from the largesse of Lay, other Enron executives and the company's political action committee.

In addition to some other contributions sent Ashcroft's way, Lay gave $ 25,000 to a political action committee that Ashcroft headed when he was a U.S. senator from Missouri (before he was defeated in 2000 by a dead Democrat). Ashcroft recused himself Thursday (and his top Justice aide followed suit) from the Enron investigation, but only after the contributions were cited by the Center for Public Integrity.

Fleischer, even before the recusals, did the usual tap dance: "The president has full faith and confidence in the professional prosecutors of the Department of Justice and in the attorney general to do what is right. . . . " Prosecutors, si; Ashcroft, no.

Now back to Fleischer and the witch hunt. The spokesman's latest whining came as the Bush administration battled to stay centimeters ahead of the Enron conflagration (an effort manifested by Bush's announcement of a federal study of bankruptcies and pensions. Duh.)

And just moments later - this is rich - Fleischer himself had to correct (he'd say "clarify") the record regarding administration contacts with Enron.

On Wednesday, Fleischer said he was "not aware of anyone in the White House" who discussed Enron's troubles with company executives. (That's to separate company-specific contacts from Enron's six meetings over the last year with the office of Vice President Dick Cheney about supposedly strictly energy-biz stuff. The veep's staff finally disclosed those sessions to Congress this week.)

Unless you take a narrow, quibbling (Nixonian? Clintonian?) view of what constitutes "the White House," Ari's knowledge was severely limited about administration contacts.

As it turns out, and as Fleischer disclosed Thursday, two Cabinet secretaries - Paul O'Neill at Treasury and Donald Evans at Commerce - were telephoned last fall by Lay about the coming implosion.

Fleischer said Lay told O'Neill about Enron's impending bankruptcy and "wanted the secretary to be aware so that the Long Term Capital experience could be a guide."

What is Fleischer telling us? That Lay was looking for a bailout, such as the one Long Term Capital Management got in the 1990s? The hedge fund received a private-sector bailout organized by the Federal Reserve Bank of New York.

At any rate, Fleischer said Evans and O'Neill agreed that "no action should be taken" to intervene. At least they seem to have gotten that part right. Fleischer said neither O'Neill nor Evans mentioned the Lay calls to Bush. Only refracting that claim through what we've learned over the last quarter century about "plausible deniability" does that seem at all, well, plausible.

It was very thoughtful of Lay to be in touch with the administration, and possibly to be shopping for a bailout. But due diligence only goes so far. I bet that a lot of Enron employees and shareholders would have liked a similar ringy-dingy about Oct. 28 or Nov. 8 (the dates that Treasury spokeswoman Michelle Davis said Lay called O'Neill).

But don't you have a teeny wonder about how many corporate chief executives get through to the Treasury and Commerce secretaries to give them a heads-up that their company is tanking?

The answer, of course, is almost any executive who, along with his fellow officers and company PAC, had given millions of dollars to the right political campaigns.

Robert Bennett, the Washington attorney representing Enron in the criminal investigation, has urged that, "We should wait until the facts are out."

That may be true in a narrow, legalistic sense - such as whether any Enron officials get to make extended visits to Leavenworth. But that does not apply to making some clear, caustic judgments about what is already known about this mess.

# APPENDIX Y

*Some of Enron's local creditors*

Jan. 17, 2002

By Enron Corp. bankruptcy filings

Some entities with Houston-area addresses that are owed money by Enron:

Adams Resources Marketing, Ltd.

Admiral Linen and Uniform

AEP Energy Services, Inc.

AEP/ HPL

AGI Consulting.com

AGIP Petroleum Company Inc.

Ala Carte Express/Citi Express

Algonquin Gas Transmission Co.

All Nations Visa Service

Alpha Corporate Limousine Services

Altra Energy Technologies

Altra Streamline

Altrade Transaction

Amerada Hess Corp.
Andersen Consulting
Apache Marketing
Aquila
Araxas Exploration
ATP Oil & Gas Corp.
Bailey's Transportation
Baker's Safe & Lock Co.
Barthel, Christina
Beasley Tire Service
Berger Iron Works
Bishop Petroleum
Black Marlin Pipeline Co.
Black Stone Energy Co.
Bob West Treasure
Boundary
BP Corporation North America
Brazos VPP
Bridgeline Gas Marketing
Burlington Resources Trading
Cabot Oil & Gas Marketing Corp.
Calcasieu Gas Gathering System
Calpine Energy Services
Cambe Geological Services
CBM Engineers

Centana Intrastate Pipeline Co.
Channel Gas Marketing Co.
Chen, Ming L.
Cicchetti, Cynthia
Cima Energy
Cinergy Marketing & Trading
Citation 1994 Investment Limited Partnership
Citrus Trading Corp.
Clark Condon Associates
CMS Oil and Gas Co.
CNG/ Sabine Center
CNR Resources Inc.
Coast Energy Canada
Coast Energy Corp.
Coastal Merchant Energy
Coastline Exploration
Cockrell Oil & Gas
Cokinos Natural Gas Co.
Columbia Energy Services Corp.
Conoco
Copano Energy Services/Upper Gulf Coast, L. P.
Copy Corps of Houston
Coral Energy Holding
Coral Energy Resources
Corestaff Services

Cornerstone Propane

Dalton Resources

Danex Energy Co.

Data Projections Inc.

Desco Oil Co.

Destec Properties

Dispatch Central/Houston

Dow Hydrocarbons and Resources

Duke Energy Field Services

Duke Energy Fuels

Duke Energy International

Duke Energy Merchants

Duke Energy NGL Services

Duke Energy Trading and Marketing

Duke/Louis Dreyfus LLC

Dynegy

Dynegy Marketing and Trade

Eagle Natural Gas Co.

ECS Compression Co.

ECTMI Trutta Holdings

EEX Corp.

Egan Hub Partners

EJW Family, Ltd.

Elite Computer Consutlants

El Paso Industrial Energy

El Paso Merchant Energy

Elf Exploration

Enbridge Marketing (U. S.)

Encom Corp.

Enerfin Resources I L.P.

Energy Resource Technology, Inc.

Energy Search Inc.

Energy Source, Inc.

EnergyUSA-Appalachian Corp.

EnergyUSA-TPC Corp.

EnerVest Energy

Enron North America

Enron Power Marketing

Enserch Energy Services (Canada)

Entergy-Koch Trading

Enterprise Oil Louisiana

Entex Gas Marketing Co.

Entex Gas Resources Corp.

EOG Resources Marketing

EOTT Energy Operating L.P.

EPGT Texas Pipeline, L.P.

Equistar Chemicals

Ernst & Young

ESCO Oil & Gas

Eugene Offshore Holdings

Exxon Mobil Corp.

Florida Gas Transmission Co.

Floyd Oil Co.

Fort James Corp.

Four Square Gas Co.

Gardere Wynne Sewell & Riggs

Gateway Pipeline Co.

GC Marketing Co.

GE Packaged Power

Genesis Resources Corp.

George R. Brown Partnership

Global Natural Resources Corp. of Nevada

Goldston Oil Corp.

Grand Goldking

Grand Gulf Production

GraphTec

GRILL

GSF Energy

Guadalupe Power Partners

Gulf South Pipeline Co.

Hall- Houston Oil Co.

Hess, John C.

Hassie Hunt Exploration Co.

Hess Energy Services Co.

Highland Energy Co.

Hilcorp Energy I, L. P.

Hines Interests Limited Partnership

Holly Sugar Corp.

Houston Energy Services Co.

Howell Petroleum Corp.

I.A. Naman & Associates

Jay Management Co.

Jet Litigation Support Services

John C. Hess

Juniper Energy

KCS Energy Marketing

Kendall/Heaton Associates

Kenneth W. Cory Ltd.

Kerr- McGee Corp.

Kimball Trading Co.

Kinder Morgan Energy Partners, L.P.

Kinder Morgan Texas Pipeline, L.P.

KN Marketing

Koch Energy Trading

Long, Cynthia

Lost Creek Gathering Co.

Louis Dreyfus Energy Services

M. Arthur Gensler Jr. & Associates

M.G. Maher & Co.

Magellan Exploration

Mainline Energy

Management Co, L.L.P.

Matrix Gas Corp.

MBM Financial Corp.

McCarter, W.B. Jr.

McNiel, Bobbie (custodian)

Midcoast Energy Resources

Midwestern Gas Transmission Co.

Mieco Inc.

Mitchell Louisiana Gas Services

National Energy & Trade

National Gas & Electric

Network Interstate

Newfield Exploration Co.

Nippon Oil Exploration USA

Noble Gas Marketing

Norse Pipeline, LLC

North Central Oil Corp.

Northern Natural Gas Co.

Northern Natural Gas/ Black Marlin

Oasis Pipe Line Co.

Ocean Energy

OEDC Exploration & Production, LP

Offshore Gas Marketing

Panaco

Pan Grande Pipeline L.L.C.

PanCanadian Energy Services

Panhandle Eastern Pipe Line Co.

Pecos Petroleum Co.

Pel-Tex Oil Co.

Penn Virginia Oil & Gas Corp.

PennUnion Energy Services

Peoples-Service Agreement

Perry Gas Cos.

Persohn/Hahn Associates

Peter M. Muller, Inc.

Petro Source Gas Ventures

Petrocom Energy Group

PG& E Energy Trading-Gas Corp.

Phillips Gas Marketing Co.

Phillips Petroleum Co.

Phoenix Gas Pipeline Co.

Pontchartrain Natural Gas System

Prime Operating Co.

Producers Energy Marketing

R. Deans Trucking

Reliant Energy Field Services

Reliant Energy HL& P

Reliant Energy Services

Reliant Energy Services

Reserve Operating Corp.
Resource Energy Services Co.
Resource International
Resource Logistics International
Richardson Energy Marketing
Rio Vista Gas Co.
Sabco Oil and Gas Corp.
Sabine Hub Services Co.
Sabine Pipe Line Co.
Salinas, Michael
Sanborn, Brandee
Sanchez Oil & Gas Corp.
Seagull Energy E & P
Seagull Marketing Services
SG Interests I, Ltd.
SG Interests V, Ltd.
Shell Gas Trading Co.
Shell Oil Co.
Shell Western E& P
Shoreham Energy Services Co.
Sonat Marketing Co.
South Dauphin Partners
Southwestern Energy Production Co.
Spinnaker Exploration Co.
St. Mary's Production

Stingray Pipeline Co.
Superior Natural Gas Corp.
Swift Energy Co.
Tauber Oil Co.
TCT Energy
Techniprint
Tenneco
Tennessee Gas Pipeline Co.
Texaco Energy Marketing
Texaco Exploration and Production
Texaco Natural Gas
Texas Eastern Transmission
Texas- Ohio Gas
Texex Energy Partners Ltd.
Texican Natural Gas Co.
Texla Energy Management
The Houston Exploration Co.
The New Power Co.
The PCI Group
The Westar Co.
3TEC Energy Corp.
Torch- CoEnergy
Torch Energy Marketing
Torch Energy TM
Tractebel Energy Marketing

Transammonia
Transcontinental Gas Pipeline
Transportation & Asset Management Co.
TransTexas Gas Corp.
Transworld Exploration & Production
Triad Energy Corp.
Trunkline Gas Co.
TXU Energy Trading Canada Ltd.
TXU Energy Trading Co.
U-T Offshore System
U. S. Gas Transportation
Upstream Energy Services Co.
Vastar Gas Marketing
Vastar Resources
Venice Gathering System
Wagner & Brown
Walter P. Moore & Associates
Whitehead, Betty
Wickford Energy Marketing
Wilmar Pipelines
Worldwide Energy Corp.
XPLOR Energy Operating Co.

# APPENDIX Z

*Viewpoints*

THE HOUSTON
CHRONICLE

Tuesday, January 22, 2002

3 STAR EDITION

Section A, page 19

By Dalia Stokes, Orin Smith, William D. Benham, Guy Lovan, Dan Adams, Ed Reid, Mary D. Morse, Robert A. Tourigney, Steve Sawyer, Steve Novotny, Glenn Hildebrandt, Irene O'Leary, L.C. Rogers

Lee, King - arm in arm

Has anyone else noticed the irony of how Houston celebrates the Confederate Ball debutante presentation at the same time we honor the life and work of Dr. Martin Luther King Jr.? The reason is no more complicated than that Martin Luther King Jr. was born on Jan. 15 and General Robert E. Lee on Jan. 19.

I, too, have a dream, all right. I dream that the "Southern Belles" presented at the Confederate

Ball will rise up and throw off the shackles of their Confederate past.

I dream that the United Daughters of the Confederacy will march in both Martin Luther King Jr. Day parades in downtown Houston.

I dream that they will host a "Fall of the Confederacy Ball," to become known throughout the South as "The Fall Ball," raising considerable proceeds that will be donated to such important projects as the Civil Rights Museum in Memphis, Tenn., and the United Negro College Fund.

Newcomers will sometimes ask, "Why isn't the fall ball held in the fall?," and the Daughters will smile wisely and remind the listener that Gen. Robert E. Lee and Dr. Martin Luther King Jr. were both born in January. (The invitation will feature Lee and King standing arm-in-arm.)

I dream that one day the Martin Luther King Parade Foundation, the Black Heritage Society and the Sons and Daughters of the Confederacy will together host a grand ball at the Junior League, honoring their forefathers whose souls still must struggle to overcome their past.

I dream of the day when the sons and daughters of Lee and King will be able to sing with new meaning: "My country, 'tis of thee, sweet land of liberty, of thee I sing. Land where my fathers died, land of the Pilgrim's pride, from every mountainside, let freedom ring."

Dalia Stokes, Houston

Variety of views on Enron's fall

Greedy are not satisfied

Regarding Enron chief Ken Lay and his cronies: When greed is your god, there is never enough.

Orin Smith, Spring

Look at other portfolios

I have one more question regarding the Enron mess: Did any relatives, friends or close associates of the company brass happen to short-sell Enron's stock before the fall?

William D. Benham, Austin

They did nothing illegal

The Chronicle is beginning to conjure images in my mind of peasants bearing torches and pitchforks while chasing the bogeyman.

Enron's management did nothing illegal, they only separated a few thousand suckers from a few hundred million of their dollars.

Capitalism is a Darwinian economic system where the strong flourish and the weak get eaten. Just as in nature, this process of selection strengthens all species.

Ken Lay belongs in the "capitalist hall of fame."

Guy Lovan, Bryan

Enron and retribution

A poll of the American people would find more sympathy for John Walker Lindh than for the senior management of Enron and Arthur Andersen.

Lindh's main crime appears to be that he is an idealistic young man who sought enlightenment and redemption from the wrong source and at the wrong time and place and now faces a real possibility of spending the rest of his life in prison.

The Enron scandal is a nightmare of criminal greed in corporate America. Ken Lay, Jeffrey Skilling and the other executives at Enron and Arthur Andersen will never pay back a dime in retribution, much less spend a day in prison.

Dan Adams, Austin

Ignorant to pay taxes

I have read how Enron escaped the Internal Revenue Service and pays no taxes. Can anyone help me get in this position? I remember hotelier Leona Helmsley saying, "Only the ignorant pay taxes." This is a real put down for many Americans.

Ed Reid, Cypress

Kettle defaming the pot

Now Enron has fired its accounting firm, Arthur Andersen, for not blowing the whistle. The kettle has defamed the pot again. For goodness' sake.

Mary D. Morse, Houston

Enforce the law, please

There ought to be a law: How often have we heard this when something goes wrong? Most often there is a law, it just isn't being enforced or isn't "politically correct."

Two stories have dominated the news of late, Sept. 11 and Enron. The first was largely made possible due to poor enforcement of immigration laws; the second due to the clamor for "deregulation."

We are a nation of laws. It's time we enforced the ones we have.

Robert A. Tourigney, The Woodlands

The Big (Olympic) Apple

Houston, Washington and San Francisco should give it up. These cities don't have even a remote chance of landing the Summer Olympics for 2012. The games will be held - without a doubt - in New York City.

Steve Sawyer, Rosenberg

It was a great marathon

I thank all who had the will and the courage to run in the Compaq Houston Marathon. They are all special, as are the volunteers who work the course. After 20 miles of dealing with the weather and the course and still having the courtesy to say "Thank you," they made it worth it.

Steve Novotny, Katy

Thanks for term limits

Regarding Kathryn McNiel's Jan. 18 Outlook article ("Houston has term limits; they're called elections"): The never-ending "service" of senators such as Sen. Edward Kennedy, D-Mass., and Jesse Helms, R-N.C., demonstrate the need for term limits at the federal level, and the incompetence of

Mayor Lee Brown shouts out, "Thank goodness for term limits" in Houston.

Glenn Hildebrandt, Houston

A child's right to a life

With regard to Amy Grossman's Jan. 21 Viewpoints letter, "Preserve reproductive choice": Women already have reproductive choice - there are many ways a pregnancy can be avoided. However, if a woman's choice is not to use them, or when they do not work, her child then has the right to live.

Irene O'Leary, Katy

Give Jensen a pay cut

Tenure may protect Robert Jensen's position, but not his salary (Jan. 20 Outlook, "A star-spangled argument"). University of Texas President Larry Faulkner should take the next step and cut Jensen's pay to a level commensurate with his intelligence - something close to zero.

L.C. Rogers, Houston

# APPENDIX AA

## *The Nation; THE FALL OF ENRON; A Feeling of Disbelief and Betrayal in a City Known for Boom and Bust; Enron: All over Houston, they're saying the company's euphoric years were a facade, lies, a house of cards.*

LOS ANGELES TIMES

Saturday, January 26, 2002

Home Edition

Section Part A; Part 1; National Desk page 14

By Megan K. Stack, Times Staff Writer

The woman in high heels and dark glasses stood on the brink of the road, chin thrust high, cardboard hoisted aloft for all of rush hour to read: "Ex-Enron employee. Will work for fair salary and benefits. Seeking a company with integrity."

This parkway twists from the marble and ivy of the well-heeled River Oaks enclave down to the shadows of downtown's skyscrapers. A few hours after sunrise, it stood thick with the sedans of energy barons, receptionists and lawyers.

When they read Sonia Garcia's sign, the white-collar parade broke into grins, slapped staccato toots from their horns, thrust their thumbs skyward. The 38-year-old single mother was a hit. But then, it isn't hard to win over a Houston audience these days--just grumble about Enron Corp.

The energy company's financial meltdown has left an entire town angry, cuckolded and saddened. The apparent suicide of Enron executive J. Clifford Baxter falls in a winter already heavy with empty pockets, evictions and jobless afternoons.

"These people's lives are coming unraveled all over the place," Rice University sociologist Stephen Klineberg said. "'This was a horrible betrayal of the workers, and a horrible betrayal of the city."

Gone are the euphoric years of handshakes and hype, of baseball at dusk and black ties by night. Enron has proved just one more spectacular boom and bust in a city long defined by dizzy rise and devastating collapse.

"Everybody wanted to work there. I was so proud when I got the job," Garcia said. The graphic artist hasn't worked in weeks, not since Enron gave her half an hour to abandon her desk. Now, she's wondering how she'll make mortgage payments on her two-story house.

"It was all a facade," she said.

Facade. Lies. House of cards. Those words are sounding all over Houston. People who had no connection to the company say they are ashamed of its behavior. Former workers fret over whether to list Enron on their resumes. A sense that the city's reputation has been bruised hangs over a town already struggling with ugly-duckling syndrome.

"Unfortunately, it tarnishes the entire city, it plays on the psyche," said George Fleming, a lawyer who represents hundreds of shareholders and former employees in a suit against Enron. "They were so connected. People go, 'Oh, yeah, Enron, that's Houston.'"

In real numbers, Enron was never crucial--far from it. It was 7,500 jobs in a city of 4 million people. Fewer than half of this town's workers have so much as a glancing relation to the energy industry.

But psychologically, symbolically, Enron had no equal. Its name graced the polished trestles of the new baseball stadium. Cash from the company laced the fine and performing arts, and kept charities afloat. It was no secret that Kenneth L. Lay was one of George W. Bush's most lavish benefactors, and a longtime supporter of the elder George Bush.

Enron sold energy, but represented power. It was a floor crowded with traders, a new way to get rich, a skyscraper full of ideas nobody else had dreamed up. Enron told this infant metropolis it was the center of a new economy, and eagerly Houston believed.

Then the story changed. The lies started rolling. The no-can-lose stock got sick and withered. Enron declared bankruptcy on a Sunday. On Monday, bosses rode the elevators down with grim news, and massive layoffs swept Enron's offices. Furious workers stumbled from the building with laptops and ergonomic chairs in tow. That was nearly two months ago, and the sting has barely faded.

"Even as the weeks go by, there is still a sense of disbelief and betrayal," said Sue Cruver, a spokeswoman for the WorkSource, an employment firm that's trolling for jobs for more than 1,000 displaced Enron workers. "There's a feeling that those responsible should, and will, pay."

Day by Day, Spirits Sink

Every day, it seems, the treachery deepens. As newspapers hit the stoop each morning splashed with new scrap of scandal, spirits sink a little lower.

"It starts to get next to you," said JoAnn Matson, a 40-year-old Enron worker laid off in December. "Every time you think it can't get any worse, there's some new document shredding or criminal activity. It makes you want to wash your hands."

This last week began with tales of destroyed documents, and ended with the discovery of Baxter's body. His Mercedes was parked up the street from his suburban home. A suicide note and a revolver were dropped at his side.

"It was tragic in the first place. This is just another tragedy," Terry Slater said. The owner of a Houston marketing firm, Slater bought the Baxter family's two-story house when the clan moved across town to a tonier neighborhood. "It's an indication of how bad it is."

Few Houstonians are able to articulate just what Enron was up to. Still, there was vague confidence in the enterprise. Inside its looming downtown offices, it was generally understood, Lay and his squad of wheelers, dreamers and weathermen were outsmarting the rest of the country.

It was odd, really--the company hadn't been around too long. Enron was born in 1985, when Houston Natural Gas merged with a Nebraska natural gas company. But suddenly, in the 1990s, the name was all over town.

Enron meant a lot to a town that spent more than 20 years swelling and suffering at the caprices of the oil market. It meant that the demise of the old oil business didn't necessarily sound a death knell for a metropolis baptized in crude. It was a symbol that this city could smooth out, grow up--and remain an energy capital.

Reliant, Dynegy, El Paso. They call them the Louisiana Street Mafia, call this strip of concrete Energy Alley. Commuters can watch the price of power run in rivers of red light on a market ticker. Enron presided to the south, envied and awesome. At dusk the young traders burst into the city from a day spent peddling industrial lifeblood across the country.

In 2000, Enron Field rose up, a hunk of gleaming glass and steel dividing downtown from the patch of refineries to the east. The season opener was the most popular event that spring: Houston came out in droves to watch Lay throw out the first pitch to the warm applause of the elder and younger Bushes. Months passed. George W. Bush made good in the national elections, Enron stock prices climbed ever higher and Houston felt itself at the axis of something rich and sturdy.

"The word on the street was it was the best company to work for," Matson said. "I mean, people--any time I went somewhere it was, 'Oh, God, you work for Enron? Can I give you my resume?' People admired us, they envied us."

A divorced mother of two, Matson walked out of a permanent position with PricewaterhouseCoopers when Enron offered her a temporary job in the human resources department. That gave way to a permanent spot, and after a year Matson had made up her mind: She'd retire from Enron or win the lottery, whichever came first. She figures she lost $85,000 to her once-beloved company.

Going broke on a bad--but bold--roll is still an act of grace in a city streaked with gambler's ethos. It isn't the financial fall that galls Houston. It's the humiliation of being fooled by a benefactor.

"This thing with Enron makes me furious," Jim McIngvale said. Better known as "Mattress Mac," McIngvale is emblematic of old-time Houston business: He rolled into town 20 years ago with empty pockets and built a furniture empire from Texas pine and oil boom cash. "They've hoodwinked the entire city. They ought to be ashamed of themselves."

Enron's swan dive is a wallop to a town that stakes its faith in industry, free enterprise and entrepreneurship. "If you can't make it in Houston," people here sometimes quip, "you're not trying."

They call it Boomtown, USA, for one simple, slick reason: Texas crude. Back in 1981, oil sucked more than 1,000 newcomers to town every week. They came from Michigan, Pennsylvania, Illinois, lured by warm climes and the promise of a steady paycheck. Every day, 230 more cars and trucks rolled onto Harris County's roadways.

When the frenzy bottomed out, it happened fast. In 1982, the price of crude tumbled--and took Houston along for the fall. By 1987, this landscape of bayous and billboards had sunk into the nation's worst regional recession since World War II.

## Enron Was Emblematic of the New Houston

It is this history that haunts Houston--and grounds it. No downfall, conventional wisdom dictates, will ever compare to what this town has already suffered.

"The 1982 collapse was so profound, so devastating, so world-changing," Klineberg said, "that nothing like this means as much anymore."

It's not the end of the world, everybody says. We've seen worse. But therein lies the rub: Enron was emblematic of the new Houston, a city that would profit from energy in the abstract. The industry that would stand sturdy in the face of progress. "It was the brave new world," said Rice University social sciences dean Robert M. Stein. "They were dealing in intangibles."

Now, the Enron sitting rooms and conference tables are ghostly. The company can't pay for the 40-story tower it was erecting across the street from the original offices. Once a monument to Enron's rocketing status, the shell of a building is a sore reminder of the company's fall from grace.

Spring is coming, but nobody can be sure how much longer the Astros' home will bear the Enron name.

"If they leave Enron Field named Enron Field this year, I'm not going to a single game," McIngvale said. "I don't care if they're paid up or not.

"They ought to call it Texas Field or Houston Field or anything else after the way they treated their employees."

## APPENDIX AB

### *ENRON LETTERS - PART 2*

*Editor's note: These are a few of the e-mails sent to HoustonChronicle.com from former and current Enron employees and others touched by the company's collapse. Some have been edited for length.*

HOUSTON CHRONICLE

Feb. 7, 2002

*Saturday, Dec. 8*

OK guys. There are many more stories than the few you have put out on the site so far. Even if you don't include the one I sent a couple of days ago, I'm sure you have many more.

Thanks for the opportunity to sound off about 'End'ron.

Les Jackson,
former employee

* * * * *

*Friday, Dec. 7*

The Real Enron -- Lies, lies and more lies ...

Up until Thursday Dec. 6, when I heard about the "retention bonuses" that Enron paid to 500 of its employees to keep them from leaving their jobs, I was rather philosophical about getting laid off. "Things will work out fine," I thought to myself, "and maybe Enron really was trying to help those of us laid off by petitioning the bankruptcy court for severance, by arranging the job fairs and the employee services seminar."

But, when I read about how $55 million was paid prior to the bankruptcy filing to 500 employees, I was in a state of disbelief. $55 million went to people who HAD jobs and NOTHING so far has gone to those of us who need it the most.

A lot of us who were laid off would have taken cuts in pay to keep our jobs. I doubt that many of the employees who were left needed any incentive to stay. Today, folks, is not a good day to be looking for a job. Paying a retention bonus is just another way of distributing money in the Enron way to those who have always profited the most.

Moreover, Enron management lied to us while stalling for the bankruptcy to be filed, telling us that "by waiting until after bankruptcy the employees who lose their jobs would be better protected and might fare better financially." This stalling was done so that what cash that did remain in the Enron coffers could be gathered up and once again paid out to those who have already benefited from the Enron elitist politics.

I am totally now disgusted by the mere thought of Enron, of Ken Lay and his Mr. Do-Good image, and of every one in Enron upper management who continue to fail to do the right thing. To me Enron is a now dirty word. A company that stole money from investors, profited from the hard work of its employees, and allowed a few to pocket enormous sums, while sabotaging the lives of many, many persons who believed in the company.

I can only hope that I will be joined by many Ex-Enroners in writing to my to my congressman and my two state senators to express my feelings and to reveal the real Enron.

Anonymous,
former employee

* * * * *

*Friday, Dec. 7*

I was laid off on Monday with the other 4,000 employees - but reflecting back on the situation, something is fishy about the group I was working in.

My group (of about 100 people in London and Houston) traded credit derivatives. In early October, when Enron was put on "negative watch" by the ratings agencies (S&P, Moody's, etc.), our business came to a screeching halt - we simply couldn't transact anymore. We were told that it was the end of our group, and we would be laid off soon. We were a "non-core" business, and it was just a matter of time. Again, that was in mid-October.

At that time, the Enron stock price was still in the $30 range. We waited and waited, everyone worked on their resumes, and we all became very familiar with the Enron Severance Plan (which, by the way, we were told we would still get up until Dec. 3). During that seven weeks, we did no trades, and we did no work. We spent most of our time watching the Enron saga unfold on CNBC and our Bloomberg tickers.

I was happy getting paid, but I also wanted to get my "standard" Enron severance package worth $35,000 (based on my salary, years of service, etc.). People began to ask "how soon can I get laid off?" and "why won't they hurry up and fire us?" I literally was asking my boss daily how soon I could be laid off. I even asked him: "Are they waiting for bankruptcy so they don't have to pay us?" It sounded unbelievable at the time, but sure enough, that nightmare scenario came true four days ago.

Now instead of five months pay, I'm waiting for this mysterious $4500, and I won't get paid for vacation days. I know some ex-Enrons that were "lucky enough" to be laid off back in October - and their severance checks were paid in lump sum (and doubled for their agreement not to sue Enron) on Nov. 30 - two days before bankruptcy.

Why didn't they lay us all off eight weeks earlier?

It's amazing that the court lets them pay $56 million in bonuses to 500 people KEEPING their jobs, they can finish the empty $300 million building I was working in, and the scumbags who orchestrated this mess are bathing in over a billion dollars worth of shareholder value which they "snuck out of the building" and yet 4,000 employees are stuck without jobs and without severance, in the middle of a recession during the holidays.

My wife and I are now faced with selling the house, the car, and the dog just to survive.

I once heard a Jeff Skilling quote: "Enron's strategy is simply to take the money outside the building and move it inside the building." The smartest thing Skilling ever did: leave the building, and take the money with him.

Anonymous,
former employee

* * * * *

*Friday, Dec. 7*

I fled Vietnam at the age of 13 after surviving the communist jail (we were jailed for attempting to escape) and 3 years of communism. I lived and breathed the brutality of communism.

As a young child of 10 years of age, I witnessed the fall of Vietnam. I watched the confusion in the people's eyes as they fled. I watched the fear in the eyes of the South Vietnamese soldiers as they retreated and disposed of their weapons. I watched families and friends hugging each other for comfort as they waited in fear for the uncertainties which were about to fall on them. I watched people cry due to loss of loved ones. I saw hurt and anger in people's eyes because they felt betrayed by all governments involved. I felt lost, scared, and betrayed. I saw so much on that fateful day of April 30th, 1975, that the images were etched vividly in my mind.

It took years for me until I managed to push those images into the distant part of my memory.

Last Monday Dec. 2, 2001, those memories came flooding back. I arrived at work in the Enron building in the morning, expecting something but not knowing what was going to come down and how bad it would be. I ran into a friend on the way to the elevator and the first thing I heard was, "It's over! Enron's stock has plummeted to less than $1."

People were running around trying to find out information. There were plenty of rumors and unofficial information, but not one word of communication from upper management. By around noon, we were all told to go home and evacuate the building immediately. We were told we will be communicated to by email or voice mail (which did not happen).

We did not know what to do with our badge, our parking card, or if we were officially severed from the company. Security guards walked around the floors and watched people while they packed, as if they were potential thieves.

I saw chaos and confusion. People raced around the floors to exchange personal contact information for fear of losing touch with friends. I saw co-workers and friends hugging one another for comfort. I saw tears in people's eyes as they bid "good bye and good luck." I saw the hurt and anger in people's eyes as they walked out the building with so much unanswered and their situation unknown.

HPD was on Andrews street in front of the Enron building to give tickets to employees who parked in front to load up their belongings. People who took buses to work in the morning were sitting on their boxes at the street corner to wait for someone to pick them up.

I feel hurt. I feel angry. I feel betrayed. Enron upper management did not treat its employees with RESPECT -- one of the main core values they preached.

Yes, this is very similar to my experience at the age of 10, except this time it's the fall of Enron, not my home country but my home for the past 5 years where I have been proud to go to every day, where I have put forth the best in my professional career, where I formed so many friendships.

"Good bye, my home away from home" I mumbled to myself. I walked to my car with tears in my eyes knowing that the images and memories from this fateful Monday will be etched in my mind for a very long, long time.

Anonymous,
former employee

* * * * *

*Friday, Dec. 7*

I've worked at Enron for the last 8 years. I loved it! It was challenging, fast-paced and rewarding in many ways. I felt like I was contributing to a good honest company, and they appreciated it. I always thought that the upper management was honest, down to earth, straight forward and really had us employees best interest at hand.

I was let go on Monday (midnight voicemail -- how professional!) I have a 3.5-year-old autistic son that we MUST keep in several therapies. Im the sole bread winner in the family so my wife can stay home and work with our son. My stock (which wasn't much) is even less than that. My wife and I don't have many luxuries, pretty much just a cell phone that she needs when she travels to Clear Lake, Galveston and Katy for Garrett's therapies. With no guarantee of a severance payment, if I don't find work soon it will be bad.

Recently I've heard of the BONUS paid to 500 employees before bankruptcy and you can be assured Ken, Cindy and several others were on that list. That's pretty low. ...

It must be very sad to be Ken, Jeff, Andrew and a few others. Their reputation will never be salvaged! In my book they are right up there with child molesters, rapists, embezzlers, terrorists and the like. ...

I may find it very hard to commit to another company like I did with Enron. There may always be a part of me that will be guarded and never really feel secure on the job.

BUT, my God will get me and my family through all this, He NEVER lets us down.

Mark Lindquist,
former employee

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*Thursday, Dec. 6*

I worked at Enron as an independent contractor last year for over 7 months. While I was never officially a company employee, I was given an Enron title as Manager of Customer Service for the newly formed Broadband division. My task was to start up an inbound call center to service the growing customer base in Broadband. I was promised that I would be converted to an Enron employee within 6 months if I met performance criteria.

Most contractors like myself received many of the same communication tools as everyone else: a cell phone, a two-way pager, a Palm III, and a laptop computer. I don't think there are very many organizations out there who would make that kind of investment in their new employees, much less a contractor like myself. But that was just one example of how money was spent freely in the Broadband Internet start-up.

The 'good old boy' hiring network was also in full swing. Any employee who had a connection with someone from a telephony or Internet background was encouraged to refer them to Broadband. With the influx of former AT&T, Sprint, MCI, Concert, and Compaq employees, the division ballooned to over 800 people by last summer. Many of these people were flying all over the country and paying full airfare and no one really seemed to mind. Broadband had been given a generous budget by the parent company and it seemed they were determined to spend it.

Enron was a tremendously exciting and vibrant place to work. I made many friends there and worked with some very talented people. I was both sad and angry when I was told last August that my contract could not be renewed and I would not be converted to an Enron employee. I had fulfilled my responsibilities and I was given no explanation for the decision. As I saw reports of layoffs several months later at Broadband, it all started to become clear. Their cost structure had finally started to take its toll.

They had done me a big favor by not renewing my contract. It allowed me to start a new assignment very quickly with IBM. The story of Enron will show that it was not the thousands of employees who were laid off this week that were the problem. It was mismanagement by upper level and executive managers. It was a blind desire to be a "Fortune 10" and to be labeled the "best company to work for" at any cost. It was indeed a dream come true for many people that became a horrible nightmare.

The Enron that we once knew will never exist again. With help from above, I managed to "move on" last summer after I was released. I can only hope and pray that those released this week and in the days to come will be able to do the same.

Les Jackson,
former employee

* * *

*Thursday, Dec. 6*

I first came to Enron as a Word Processor in Purchasing in 1989 when nobody really knew who or what Enron was. Enron seemed like the best-kept secret.

I never graduated from college, but it seemed like just working there brought out my best assets. There was always a challenge and a desire to be better at whatever I was given. The emphasis was that a happy employee is a productive employee. People were truly happy there. I remember times when we would get to work and the boss would say that he was taking the whole department for lunch and a field trip so that we could actually see the operations of the pipelines. Many had just been transferred down from Omaha and we homefolks had fun making them feel a part. True family feeling. The benefits and perks have always been the best.

I left the company after 3 years, reluctantly, to pursue my own home-based business and felt so supported by everyone that I was leaving behind. After several years, I was really needing benefits that were too expensive to purchase on my own, so I sought permanent employment again. Hoping against hope that I could be re-hired at Enron it seemed that the only way back in was to start out as a contractor and then prove your work ethic.

I could tell that things were so different. Not the great benefits, not the pay, but the atmosphere was different. The first contract job I got was last year and my "supervisor" was 23. She came into work around 9:30 a.m. or so, checked her e-mails, surfed the Net, chatted with her friends on the phone and went to lunch for an undetermined amount of time. When she came back, it was usually time for a meeting and she could always pull it off to make it look like she was really putting out the work. I knew who was doing the work. She bragged about her salary to everyone (unbelievable) and then when I began to get recognition, she let me go. I was afraid that she represented the new Enron and I wasn't sure I wanted to be a part of that.

I took another contract job 6 months ago and the feeling was energetic! Deregulation was about to happen and my supervisor was so positive that our group would only grow. His enthusiasm was contagious. At this point I decided that I wanted to be a part of the Enron organization so much that I took a lesser position just to get on board. I served in that position as an actual employee for one month.

I have been just as stunned as everyone else at how the guys up stairs seem to have no shame in taking from this legacy of a company to satisfy their own greediness. I have compared this event to the likes of the Titanic. The Titanic was so invincible and extravagant and they were certain that nothing could bring it down. But the carelessness and pride of a couple of guys blinded them to the glacier that was able to sink the ship in a matter of hours. Of course it took more than a couple of hours to bring Enron down, but it took just a few greedy, manipulating people to impact thousands of people and hundreds of businesses so dramatically and some will never recover. I will. I have. God is my strength and provider - no company can do that. God have mercy on those that have done this.

Anonymous,
former employee

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*Thursday, Dec. 6*

I never thought the day would come that I was ashamed to say I "worked" at Enron.

I worked there for over three years and in the beginning it was a great company. People you saw on the street would ask "who do you work for?" and proudly I would say Enron.

Those days have long passed. It's hard for me to understand how upper management could "preach" Respect, Integrity, Communication and Excellence when they themselves could not portray it. I don't just blame one person, I blame them all. Each one of them knew what they were doing and clearly had no conscience. Greed is something that kills human kindness.

We received a voicemail from Ken Lay on Sunday night stating that "Informational Floor Meetings" would be held next week and then our management would be talking to us and letting us know who would be affected. To our amazement they simply e-mailed us to attend a meeting and what time.

Once we all were seated in the meeting, our management informed us that we were "terminated" and that we needed to leave the building within half an hour. He said that he would not take any questions and this was it. You could have heard a pin drop. He did say that the board had asked for everyone to get a "severance" package which would be one week for every year of service, one week for every ten thousand you made and if you signed the waiver not to sue it would double. The $4,500.00 was to cover the WARN Act.

They simply told us that to keep the peace. I was 100% vested in Enron stock, so I lost everything along with the other employees. They not only stole our money but our livelihood and then paid employees to stay for 90 days. I would have stayed just for my paycheck.

I sure wish Mr. Lay and the board of directors, along with upper management would explain to our children why there won't be much of a Christmas this year; why the ones ready or getting close to retirement won't have any money; and why they could do something so cold and heartless to their employees. If you have to ask why then you "Worked" at Enron.

As for me, I want him to explain to my kids why we may have to move. I just received notice of foreclosure.

To all my friends and fellow co-workers, may you have a blessed holiday. The employees at Enron had integrity and no matter how much they took from us we will continue to have that.

Anonymous,
former employee

* * * * *

*Thursday, Dec. 6*

We didn't realize it at the time, but the end of Enron came at an all-employee meeting on Nov. 20.

After our stock price had taken a dive because of the LJM investments, Ken Lay was facing some tough questions from the employees present.

Now Dr. Lay was a legend at Enron and in the Houston community; something of a kindly patriarch who would always look after his Enron family. But as he danced around explanations of Fastow and SPV's, one of the questions written on a 3x5 card came forward.

"Dear Ken: Are you on crack?"

There was a bit of a gasp among the employees present, followed by laughter (including Ken). But somehow that marked the tide change. The aura of invincibility had been pierced. From then he was just another suit who had sold us out for his own gain.

For the damage done to his reputation now, it probably would have been better had he been on drugs.

Anonymous,
former employee

* * * * *

*Thursday, Dec. 6*

I worked for Enron for almost 6 years. I have to say they were some of the best and the worst years of my career. I had never felt such enthusiasm and pride for my job as I had at Enron. I can't remember working as hard for any other company as I did there, but after so many years of seeing and experiencing the depths to which people will go to advance themselves was more than I could bear.

I left feeling defeated, and I started to question my own worth as an individual. I got out just in time. Family and acquaintances questioned by decision to leave, after all it was the BEST I had ever had. While I did find another job, hearing my friends talk about their bonuses, raises, and perks made me envious and I had hoped to return some day.

I am glad my dream was not realized. Enron always did do things in a big way, from start to finish.

Anonymous,
former employee

## APPENDIX AC

### *The fall of Enron; 'It's kind of hard to believe'; Ex-Enron workers rip killing's story*

THE HOUSTON
CHRONICLE

Friday, February 08, 2002

3 STAR EDITION

Section A, page 19

By Houston Chronicle News Service

Across Houston, Enron employees watched former chief executive Jeffrey Skilling's congressional testimony on television, turning incredulous, angry and then sarcastic by turns, as a man they knew as savvy and detail-oriented pleaded memory failure and ignorance about critical financial transactions at the now-collapsed energy giant.

"Jeff Skilling said nothing," said Jessie Patterson, one of several former Enron employees who gathered in sports bars and other after-work haunts to watch their former boss testify before Congress on Thursday.

"He might as well have taken the Fifth," Patterson added, "because he didn't say anything that brought any closure. I wanted to know what happened."

Helen Mathews, who lost her $ 35,800-a-year job as a senior administrative assistant, turned on the TV in her Houston apartment after returning home from the unemployment office.

"It's kind of hard to believe: A CEO who doesn't know how the company made its money," said a bemused Mathews, who is in her 50s and worked at Enron for five years. She wondered aloud why he had agreed to testify, when others evaded congressional questioners, but said she imagined he did it because he believed he could outwit them.

"He probably figured he was smart and could deal with it," she said of Skilling, whom she described as a "hotshot" with more than a touch of arrogance. "Like he thinks he's the man."

Digna Showers, 53, who lost her job as an administrative assistant as well as $ 450,000 in her retirement fund, grew indignant as she listened to Skilling testify.

"He is lying; he knew everything," said Showers, who said she had seen Skilling frequently over her 18 years with the firm, where Skilling was known for his intimate grasp of the inner doings at the company. "I am getting sicker by the minute."

"(Skilling) has an MBA from Harvard," said Showers, who is the primary supporter of her husband, a disabled schoolteacher. "He's knowledgeable He's twisting things around. He's not answering things directly."

For Dorothy Ricketts, 46, a former business analyst at Enron who earned $ 70,000 a year, the testimony provided one more disturbing twist in what for her had been a 12-year saga at Enron. Much of her retirement money was tied up in Enron stock. How much, she won't say. "It hurts too much to talk about it," she said.

She said she had believed what Enron executives told her about its business prospects, and was eager to show her loyalty by buying company stock.

"I guess you could say I believed the hype,and what they were telling us," Ricketts said.

Watching the testimony at her Missouri City home produced odd feelings. "I don't understand how he could be in the position he was in, and say he didn't know what was going on. It's unbelievable. He doesn't recall a lot."

Alice Johnson, 50, a market services analyst at Northern Natural Gas, said she found herself wondering when "the real truth" would emerge.

Johnson has not lost her job at the former Enron subsidiary but fears she will under its new owner, Dynegy Inc. She said she sometimes saw Skilling in meetings during the 28 years she worked at the firm. She recalled him as "knowledgeable," with a razor-sharp sense for business but also a short fuse.

"He wasn't conscious of people, just the bottom line," she said.

# APPENDIX AD

## *Power failure; Skilling energized Enron but draws suspicion after its fall*

THE HOUSTON
CHRONICLE

Sunday, February 10, 2002

4 STAR EDITION

Section A, page 1

By Staff, Mike Tolson, Alan Bernstein

It was December 1996 and the New Economy was rolling. Venture capitalists couldn't shovel money fast enough into the dot-com maw. Visionaries extolled revolutionary business models monthly in the pages of hip magazines like Fast Company.

In appearance and attitude, Houston may have been light-years from Silicon Valley. But hometown giant Enron was making its own great leap forward. It, too, had a visionary - a persuasive, cocky, market-oriented genius steeped in the culture of Ivy League business schools and high-dollar consulting.

Like his counterparts in the boardrooms of San Jose, he spoke the lingo of change, and he could make Wall Street analysts believe he had led a lumbering pipeline company into new fields of packaging and selling energy - and just about anything else.

Christmas came two weeks early to Jeffrey Skilling that year. He was named to Enron Corp.'s No. 2 job. The formal title was president and chief operating officer, but no one really believed that the company was not his to control.

Ken Lay, the chief executive officer, had announced he would head the company for another five years. That led to the departure of the president and cleared the way for Lay's protege, the 43-year-old whiz who had brought world attention to 1400 Smith St. with the success of his Capital and Trade subsidiary.

Now, Enron was well on its way to becoming a new type of company, one more focused on financial transactions, on creating marketplaces for things never before sold as commodities.

And Skilling had become the person to lead it, just seven years after Lay hired him away from business consulting firm McKinsey and Co. with the idea of turning natural gas into a brokerable commodity.

As it turned out, Skilling's move from the trading room to the corporate tower was the beginning of the end for Enron. Many who worked at Enron and experts who followed the company closely now believe that the model Skilling so loved - stressing trading at the expense of old-style asset development - was less to blame than the profound shortcomings of its leader:

An arrogance toward convention and the discipline it requires; a lack of basic corporate management skills; a relentless focus on the quick result; a team eager to defer to his judgment; and inattentiveness to financial problems that could jeopardize the company's credibility with the people who mattered most - investors.

"He had never run a business," said a former high-ranking Enron executive. "He'd run a portfolio of transactions. And he didn't care about a whole lot of the company. He wasn't suited to the job, pure and simple."

Several years earlier, some executives had expressed similar doubts and reservations to Lay. It did not matter. Lay bet it all on Skilling.

"We built a great company. We were doing great things. We were making markets where markets didn't exist," Skilling told the Chronicle in December. "We made the correct decisions given the information we had."

On Thursday, testifying before a congressional panel, he was asked repeatedly about the cracks in the foundation that others had seen, about memos that warned of unethical and possibly illegal conflicts of interest.

Tight and intense, with some of the poise but none of the easy manner that used to mark his public appearances, Skilling was a model of deniability.

"On the day I left," he said. "I believed the company was in strong financial position."

For a man who prided himself on commanding "The World's Leading Company," the current state of affairs must be unimaginable.

"Jeff was terribly insecure, and I'd say emotionally insecure," said a former Enron executive who knew him well. "The way of proving himself was by being smarter than anybody. What does he have now?"

With his reputation in tatters, he is mocked by his former employees and his own past rhetoric. Once, he bragged that Enron would become the world's biggest company. What he got was the world's biggest bankruptcy.

Jeffrey Keith Skilling, 48, was born in Pittsburgh, the second of four children of Tom Skilling Jr., a mechanical engineer, and Betty Skilling.

The father, who sold valves to power plants and industrial water facilities, took the family to New Jersey, then to Aurora, Ill., a growing city outside Chicago's southwest suburbs where the children attended public high school.

Jeff was a scholastic achiever, part techno-geek and part comer, never a varsity athlete but always willing to take physical risks that sometimes led to injury, according to several accounts.

His older brother, Tom Skilling III, a Chicago TV weatherman, thinks Jeff's many injuries help explain the drive and ambition that led him into high and risky finance.

"Jeff spent half his life in a cast," Tom Skilling said. "He was breaking his bones, or he fell out of a treehouse. He ran down a hill on the Indiana Dunes and went headfirst into a tree. I remember we worried about him because he had had partial amnesia.

"He always seemed to come back, but I always thought it instilled in him a special drive not to be put down again - to do things right and make something of himself in life."

Younger brother Mark, a writer based in Turkey who left a California law practice in 1998, found meaning in Jeff's accidents.

"The guy just never stops," he said. "He doesn't sit in an easy chair too often. It just goes back to his curious nature. . . . He just isn't a stay-at-home guy."

Years later, he would lead friends and fellow Enron executives on adventure vacations that stressed the dangerous: a 1,000-mile dirt bike trip across Mexico, a scavenger hunt in the Australian outback. Once, on the eve of an African safari, he even said he would like to take a trip with enough risk involved that someone could die.

In high school, Skilling made the National Honor Society, worked on the yearbook and was an alternate on the two-person academic quiz team.

To family and friends, the indelible image of Jeff Skilling as a teen-ager is of him working in the control room of a new community access station, WXLT Channel 61. The station shared a leaky old building with a movie theater in downtown Aurora, then a largely blue-collar town at the end of the commuter rail line to Chicago.

Tom III did some of the on-air announcing. Jeff twirled dials and inserted public service announcements. And Peter Landesman, now an Ohio marketing director, operated the one camera. Landesman remembers Skilling as studious and uncharismatic.

"What would describe him best was middle of the road, nothing outstanding, nothing controversial, a nice guy," Landesman said.

Years later, Saturday Night Live spoofed Midwestern community television with a running skit called "Wayne's World," featuring a pair of very un-Skilling-like stoners. The fictional Wayne's World is set in Aurora, Ill., and Jeff Skilling tells friends he wouldn't be surprised to learn that somehow his shows directly inspired the send-up.

Southern Methodist University recruited heavily in the Midwest in 1971, when Skilling graduated from high school. He and some of his friends accepted engineering scholarships to the Dallas university.

In SMU's Beta Theta Pi fraternity, Skilling was called Rocky, short for Rocky Hardhat, an allusion to his politics.

"He was conservative socially and economically," said Craig Shackleton, an Austin engineering manager who went to high school and college with Skilling. "He wasn't a free-love, hang-out sort of attitude. It was, 'I want to be more successful, get something done, stay focused.' "

Skilling took more business classes at SMU and worked at a bank. In a small social circle of Midwesterners, he met SMU student Susan Long, who was from another Chicago suburb. They married a few days after graduation in May 1975, and Jeff then joined First City National Bank, where he worked in asset and liability management. Soon, he went into the two-year master's degree program at Harvard Business School. He would graduate in the top 5 percent of his class.

"His intelligence was razor-sharp," said a former classmate, who like a number of others ended up in the energy business in Houston. "He was a friendly guy, very personable."

After Harvard, Skilling went to work for McKinsey & Co., jumping at a chance to be stationed in its Houston office. He rose to chief of the company's energy and chemical consulting practice, where he worked with Enron, caught Lay's eye and left in 1990 to head a division created for him, Enron Finance.

The expanding energy company was involved in a growing array of ventures, including water and power plants. But that side of the business held little interest for him.

Skilling was absorbed with one big idea - moving Enron away from operating plants and pipes to a company that controlled the switches on a nationwide network.

Enron did not have to generate or distribute power to make sure that customers got power. He often compared the company he was building to an investment bank, one that created new contracts and traded them online.

And lots of things, as he saw it, could be made into commodities the Enron way, including newsprint and precious metals and weather derivatives and maybe even airport landing rights and railway space.

To those dazed or troubled by his pace, Skilling offered no apology. Growth was not only essential, he said, it was the prime corporate mission. If you moved too slowly, you risked not getting to a new market first, which could be as bad as not getting there at all.

It was heady stuff, pushing the envelope. And there was risk involved every day. For Skilling, that was the fun of the job, but more than that, it was the only thing that could bring the sort of big rewards he wanted for the company.

"It's scary," he wrote in 1999, "when you wake up in the middle of the night and say, 'Gee, I could have done any of 15 different things. I chose this one. What if I'm wrong?' You've got a lot of money riding on it, a lot of people's careers riding on it. It's a different kind of mindset and a different kind of world than a stable business with incremental change."

Incremental change was for companies and executives who didn't "get it." Dinosaurs, he called them, with their old notions of hierarchy, tight control and hard assets. Creativity was Skilling's mantra. He sent recruiters to the nation's top MBA schools - and only the top schools - in search of the brightest.

As he built his "horizontally" organized company, he avoided convention. He hated office walls. He didn't review expense statements. He preached against staff meetings, status reports, dress codes and strategic planning, which he said stifled individual innovation and initiative.

"I always said our weirdest people are our best people," he told interviewers from the University of Virginia Darden Graudate School of Business Administration in 2000. "Bring on the weird people."

Much has been made of the Enron culture: arrogant, abrasive, hard-charging, creative, individualistic. It was an inevitable byproduct of Skilling's personality and modus operandi.

"Jeff didn't care what people's names were," said a former Enron executive who worked with him closely and liked him personally. "He had no use for the administrative side of the business. He tried every once in a while to be good. But that wasn't his nature. He was the hard-driving trader personality."

Skilling brought to the company the now-infamous performance-review system, often referred to as "rank and yank," in which those employees rated in the bottom 15 percent by their peers were fired. It was a good way of axing the deadwood and workers who didn't "get it," but it made people paranoid and self-interested.

One person who worked there said Skilling arbitrarily dismissed employees in the early 1990s from an Enron division he deemed overstaffed, without regard for their performance and qualifications. Skilling's explanation at the time, he said, was, "We need bodies."

More often than not, however, the company was hiring. Skilling figured that if he could keep bringing in enough smart, imaginative people, good things had to happen.

"He rewarded risk takers and idea generators," said a former executive. "He instilled in them it was important to think outside the box and make suggestions. It was like hiring all entrepreneurs. That's what he liked, people who felt like they were running their own business. Of course, the problem with that is people didn't want to work together. Why spend time giving someone else credit when you could be working on your own deal?"

Skilling distrusted traditional management, which may lend credibility to his congressional testimony that he had limited information on some of the notorious partnerships that were used to keep debt off the Enron balance sheets.

He often said the only things for a manager to pay close attention to are the risk involved in a particular venture, the expected return to the company and compensating people for performance.

As revenue growth boomed in the Capital and Trade division, Skilling achieved a halo of infallibility.

"He was so smart, and you couldn't help getting caught up with his ideas," the same executive said. "You start thinking, 'Wow, I love this place.' And he's the one making it happen. You couldn't hate him."

You also couldn't say no to him.

"He would listen to suggestions," a source said, "but he would surround himself primarily with people who shared his belief system. They found out what he believed and regurgitated to him. A few brave people said things, but they learned to keep their head down and keep their mouths shut."

For all of Ken Lay's confidence in Skilling, there were plenty of doubters when Lay made his decision in late 1996 to make him the heir apparent.

"That was the kiss of death," a former high-level manager said. "Trying to make him the leader of the company and put him in with these different kinds of people, it was never going to work. He should have been left on the trading side as the idea man. But he wanted that title."

Skilling's reign as Enron CEO lasted about six months. When he left in August, he said it was for personal reasons, which he did not publicly disclose.

Few could buy his explanation, and he acknowledged to the Wall Street Journal that he might have stayed on had the stock price still been high. Instead, the price had dropped by half, and Lay and other Enron chiefs had already received written warnings from employees about shaky financing schemes within the company.

The financial press buzzed with speculation about his leaving. A company bond offering planned for the next day had to be scuttled when the underwriter withdrew.

Carol Coale, a Prudential analyst who had often been at odds with Skilling over the stock's performance, was skeptical about his departure. She wrote what she called a "scathing note" to investors after learning of it.

"By coincidence, I had a scheduled meeting with Lay the next day and had an unscheduled meeting with Skilling right before that," Coale said. "He convinced me the personal reasons were indeed real and asked me to keep it to myself. He was incredibly convincing. I walked out of his office believing his reasons were personal."

Now she's not so sure. But several Skilling friends thought the explanation rang true.

His success had come at some personal cost. His marriage ended after 22 years in 1997, and he saw less of his children than he said he wanted. For the class profile of his Harvard Business School 20-year reunion, he penned not a summary of his accomplishments but a letter of regret for the loss of his marriage.

"Sometimes you discover too late that you made a mistake," said an old Harvard friend who lives in Houston. "Enron became his life, and you didn't see him very often. All those guys at Enron were driven, and you can see how many are divorced. I wouldn't be willing to give up the things that Jeff did."

His older brother was shocked when he heard of the resignation.

"My first thought was maybe he is sick, maybe he has cancer or something," Tom Skilling said. "I took him at his word, and still do, when he said, 'I just looked out on the world, and (realized) I have just missed half of it.' "

About two months before his departure, Skilling uncharacteristically stopped bantering with employees as he rode the elevator from his 50th-floor suite, according to a close observer who worked with him.

"He was always gregarious," the former Enron executive said, speaking on the condition that he not be identified. "Then all of a sudden he had nothing to say. He watched his toes (in the elevator) and then left."

In truth, said one person who worked with him, Skilling maybe was never the CEO type, which made it easier to walk away. Another former high-ranking executive recalled an incident from several years ago at the company parking garage. There was a line of cars waiting to enter one morning when a Mercedes suddenly pulled in front and forced its way in.

Other drivers honked and yelled, prompting the man in the Mercedes to roll down his window and shoot the finger at them. It was Skilling.

"When I heard about it, I went and talked to him and told him you can't do things like that when you're president of the company," the executive said. "You always have to behave in an appropriate way. He said maybe I was right in principle, but he was late for a meeting and how dare all those people yell at him anyway."

Regardless of Skilling's reasons, Coale does not believe he left in fear of the worst. He would not have so easily admitted failure.

"I don't know that he saw the implosion," she said. "He and the rest of his team had gotten away with this kind of accounting for so long he may have had no reason to think it would all come down around him."

People close to Skilling say his purported epiphany - about the need to slow down, get to know his children better and finally be that stay-at-home guy - came after he attended the London funeral of some Enron employees who died in a plant explosion.

Younger brother Mark was not surprised when Jeff stepped down.

Well before last summer, Mark said, his brother had mused about quitting to learn French and take on other intellectual challenges.

"I was kind of surprised how long he stuck to doing one thing," Mark said.

The money could have been incentive enough: an annual salary and bonus well over $ 1 million, with tens of millions more in stock options. He started his own foundation and became a significant benefactor to the Houston Ballet, Junior Achievement, the Multiple Sclerosis Society and other charities. He took exotic family vacations, sailing with his children in the Caribbean and visiting his brother in Istanbul.

Now, in the cross hairs of a congressional investigation, vacation plans are on hold and his engagement to Rebecca Carter, a former Enron executive, goes on without a wedding date, according to friends.

Carter, 42, was in charge of communications between Enron management and its board of directors - ironic in light of an in-house investigation that alleges Skilling failed to carry out a promise to the board to monitor Enron's controversial investment partnerships.

A casual dresser with a hankering for fast-food hamburgers, Skilling lives in River Oaks in a $ 4.2 million Mediterranean-style mansion he bought in 1997, according to public records. His vanity license plates, WLEC1 and WLEC2, are registered to a 2-year-old Mercedes-Benz and a 1995 recreational vehicle. WLEC stands for one of Enron's slogans, "World's Largest Energy Company."

Presumably, he will get new ones.

# APPENDIX AE

## *Movie scripts abound for the Enron show - bull market*

HOUSTON BUSINESS JOURNAL

Friday, February 15, 2002

By Bill Schadewald

This continuing Enron Corp. fiasco just keeps getting curiouser and curiouser.

We've got Congressional committees pre-empting daytime TV soap operas to conduct hearings that harken back to the McCarthy era. We've got weepy wives deflecting blame from Enron executives and distraught employees lamenting the loss of their life savings.

It was probably inevitable that all of this drama would quickly inspire a movie. And sure enough, as an item in this week's City Beat section points out, a film on the sordid Enron saga is already in the works.

Creators face a formidable task in tackling such a mundane subject and coming up with a flick for audiences accustomed to whiz-bang special effects and non-stop exploding excitement.

If the Hollywood moguls want to make this a truly boffo box-office epic, they should consider following some of the tried-and-true formats drawing crowds these days.

Possible genres could include film noir, science fiction, high drama, adolescent comedy and historical spectacle. The following are a few suggestions to get the creative juices flowing.

"Honey, We Shrunk the Company" -- An Enron chairman whose name rhymes with "Pay" invents a miniaturization device while fooling around in the garage. He accidentally reduces the 401(k) plans of all employees to microscopic size. Miraculously, his stock portfolio and those of his cronies are somehow shielded from the downsizing rays.

"Ken and Jeff's Excellent Adventure" -- A pair of wacky Enron slackers find a time capsule and go back in history, where they whimsically concoct a bunch loony business partnerships and unwittingly disrupt future cash flow for hordes of investors.

"Dude, Where's My Corporation?" -- More than 4,000 people arrive in downtown Houston one morning to find out that someone has hijacked their place of work. An investigation reveals that it was gone in 60 seconds.

"Memento Meets Subtotal Recall" -- A select group of Enron insiders with short-term memory loss are unable to remember any financial details of the immediate past. Flashbacks reveal that they are actually aliens sent from a hostile planet to destroy civilization by evaporating the entire economy with nifty capital-disintegrating lasers.

"Big Fat Liar, Liar" -- A precocious teenager crafts a complex business plan designed to expand an energy company into a diversified global conglomerate with interests ranging from broadband and gas trading to water plants and pipelines. The plan is expropriated by a duo of shady Enron characters when the kid is home alone. But the little punk has the last laugh when all of the operations prove to be financial flops.

"Silent Movie" -- Nobody talks for hours on end as Enron executives sit with eyes wide shut and plead the fifth before a panel of political inquisitors.

"The Goodfella Godfathers" -- Board members of the Enron "family" merge with a number of companies by making offers they can't refuse. Then suddenly -- budda-bing! -- the feds put on the screws with an audit of off-balance-sheet accounting practices. The gang is forced to go to the mattresses. The clan is cut down in a hail of stock selloffs, and now sleeps with the fishes.

Mind you, these are just a few top-of-the head ideas. Other possible scenarios:

"All the President's Contributors."

"The Paper Chase Into the Money Pit."

"Lack of Collateral Damage."

"Battlefield Enron" (based on the book by Enron Hubbard).

"The Lyin' Kings."

If any of these concepts fly, I'll be more than happy to sell out for the right price -- plus points.

Payment is accepted in cash, checks or credit cards. Or any other monetary unit except Enron stock.

# APPENDIX AF

*More letters from current, former Enron workers*

THE HOUSTON CHRONICLE

February 8, 2002

*Editor's note: These are a few of the e-mails sent to HoustonChronicle.com from former and current Enron employees and others touched by the company's collapse. Some have been edited for length.*

*Tuesday, Dec. 11*

I was really disappointed on how the executives and company let down all their employees. I accepted a job offer and moved to the London office a little over a year ago. The communication between Houston and London was horrible throughout the turmoil the last few months. I made daily calls to my friends in the Houston office just to find out what was going to happen next. It was horrible how the employees in the London office were let go. We were told that there was supposed to be a meeting at noon on Friday, Nov. 30. We waited around and then the meeting was pushed back until 3 and then 4:30 and then 5 and finally at 5:30, we were called together in groups of about 400 and let go. We were told we were paid through November and that was it. No December pay, no notice period, nothing. To top it off, a few executives get huge bonuses to stay on and work when the company can not even pay out the employees it let go in Houston or other offices.

The collapse happened so fast. I never thought it would happen. In a way I am sad, but more disgusted than anything. My mother lost close to a million dollars in her 401(k) and will not even receive a proper pay out after working for the company for over 20 years. I am sad for the thousands of employees that are unemployed and looking for work in this job market and during the holiday season.

Anonymous,
former employee

* * * * *

*Thursday, Dec. 13*

As I have been reading the stories published by former Enron employees, I've noticed one theme sadly absent. The culture that made Enron such a great place to work – being in control of one's own destiny – is the same culture that has contributed to our personal downfall. We, as employees, had the responsibility to ensure that our own personal finances were in order with the tools supplied us. This means that we were each individually responsible if we chose not to diversify our holdings - through the 401(k), stock options and bonuses. This is a basic theme expounded by all financial planners – diversify, diversify, diversify. We have been fairly well paid, all received stock options, and most received bonuses over the years. Ultimately, it was our responsibility if we chose to spend it all and live beyond our means rather than save some for a rainy day, which appears to be now.

I have been an employee for almost 14 years; yes, I still have a job – but for how long is anyone's guess. And yes, I lost a lot of money in the 401(k) plan, but I must personally accept a lot of the blame for that. The money was distributed in the manner that I chose. It was a risk that I took and a loss that I must also accept. We as a society have chosen to place blame anywhere, but on ourselves. That is not what we should be teaching our children; we must once again be accountable for our own actions. Unless, you have an employment contract, you are considered an "at-will employee" and as such may be terminated at any time with no notice and no pay. That didn't happen at Enron. Those who were terminated have been given the $4,500 that was promised. You would be hard pressed to find many other companies that would seek to do this for over 4,500 employees simultaneously.

There have been so many negative comments about Enron that no one seems to remember the positive attributes. Enron was a great place to work; it equipped us to move into other jobs within society. We have been trained and used the most up-to-date technology and have worked in a very fast-paced environment that allowed us to develop diverse interpersonal skills and equipped us to move seamlessly into other companies. We have a lot of value to add! We must not forget that!

My mother repeated these two sayings to me over and over as I was growing up, and they seem to be especially appropriate at this time. 1) There are always two sides to a story; just be sure you examine both sides before drawing a conclusion. 2) If you always focus on the negative, that is all that you will ever see.

My mother repeated these two sayings to me over and over as I was growing up, and they seem to be especially appropriate at this time. 1) There are always two sides to a story; just be sure you examine both sides before drawing a conclusion. 2) If you always focus on the negative that is all that you will ever see.

Yes, we have lost much and let's mourn that loss, but we also have much to gain, so let's put the past behind us and move on to whatever the future holds with our heads held high. We were part of something special!!

Anonymous,
current employee

* * *

*Wednesday, Jan. 16*

I worked for Enron and affiliates for nearly 11 years starting in 1991 at Portland General Electric. I transferred to Enron Corp. on Dec. 1999 to work in Enron International managing power plant operations and assets, primarily in the Caribbean. I supported Enron in Third World environments where I was threatened by governments, lawlessness and disease. On a recent trip to Nigeria I had 10 armed body guards to escort me from the airport to our guarded compound apartment. A week after I left, one of these body guards was shot and killed for a jeep in Lagos. For 30 nights around the apartment, shots would be heard. I saw a decapitated head floating in the water on a return trip from the power plant by boat. I have dealt with civil strikes, machete-wielding employees, fires and other threats that have endangered my life. I loved my job! The adrenaline! I loved the clout that came with the title and Enron company name. The responsibility and the ability to control millions of dollars in assets, and most of all, delivering power to Third World countries to improve their quality of life. The gratitude from the local people for the cultural change, sharing of knowledge, and delivery of electricity far offset the dangers.

During my last two years I accepted risks to my life and gave up time with my family while traveling 80% to save Enron millions of dollars, generate millions in revenue streams, and participate in multibillion-dollar deals. All while I watched the international and domestic assets be liquidated to cover the positions made by Enron Corp. I watched the empire shrink daily and assumed I was being protected for my valuable service, but I recognized the risk. I was asked not to leave the company several times and told that "as long as you are a manager at Enron, you will have a job for life. Enron needs people with the "Enron management style" no matter what department you are managing." I knew that if our department was liquidated, I would either be reassigned or receive severance in accordance with the Enron Benefits policy and my hiring contract. I received neither. I did receive one-half hour to remove my things. I also have received bills for expenses for my travel and communications for Enron.

Enron believed that $4,500 was justifiable for all employees let go December 3rd, whether their regular severance was more or less. Additionally, Enron gave $55 million to retain key employees. Today I read of another $11 million retention "stop go" bonus to marketing employees. How much more do these key employees need? Besides the $88,000 severance due to me, I also lost my retirement, and Enron cannot find my pension fund from Portland General Electric or amount of my cash balance plan, which at one point was $38,000. I estimated my losses near $400,000. Peanuts, compared to a friend who had 26 years with the company!

During my tenure at Enron, "change management" was the slogan. I endured hardships and risks, sale of plants from under me and job security threats. I committed myself as a company man. I got my check for $4,500 - less taxes and insurance.

Please push in the Houston Chronicle for severance information, not just for the losses from stock. I know that stock was a risk when I invested. Additionally, these employee retirement programs were for the long haul for a company where the average age was 36. I can eventually rebuild from the stock losses. But severance was a "sure thing" after you were vested. When they told us that we were being laid off, we were also told that Enron was filing with the bankruptcy judge for corrected severance to be paid to ex-employees. Obviously, this was told to us to get us to leave the building quietly! Now they tell us to just file a claim in the bankruptcy court. Enron rewrote their benefits policy for 2001 and included clauses for not paying severance if legal action is taken against the company. So what is going to happen with severance??

Why is the Bush Administration so concerned about stock and employee retirement stock plans? These stocks were entered into with known risks. Now 5,000 employees are sapping on the unemployment programs, when they could be living on their severance while waiting for jobs to open in the first quarter. But after all, it is more important to pay the remaining employees a retention bonus, rather than meet prior commitments. Especially, if the company goes into Chapter 7.

Kelly Merritt,
former employee

* * * * *

*Friday, Jan. 11*

Some Enron employees were forced/encouraged to line up in the Enron Building Lobby this morning for -- get this -- Krispy Kreme Donuts and coffee. It was supposed to be a morale booster. But today, unlike the former so-called good ole days, no executives were walking around and mingling with the underlings. Of course, the thought on everyone's mind was, "who is paying for this and how much did it cost?" Must be an HR employee's brainchild...

Anonymous,
current employee

* * * * *

*Monday, Jan. 28*

I must remain anonymous as my husband just resigned from Enron. He resigned the week of Ken's resignation, and that night when we heard the breaking news of Lay's resignation, my husband said, "Hey, my timing's getting better."

Employees were told that there were additional incentive pay packages in the future. Of course, none of them believe a word out of anyone anymore, except each other. He was offered a new job across town. He was lucky. It was a very difficult decision for a person who had spent his blood, sweat and tears with Enron. The atmosphere has been so awful since December 4th. I used to wonder if it would have been better to be severed then; your story captured it perfectly. Jonestown, they call it, you know. "What color will the Kool-Aid be today? Once we believed every word from our leader."

My husband has lost almost 20 pounds, he sleeps very little, although the last few days have been better. It came as no surprise to anyone that Cliff Baxter was awake at 2 a.m., in his darkest hour, apparently. Most Enron people are. And now, it's not just a matter of money, as tragic as that is for pensioners, former and current employees and investors; it's now a matter of life and death.

We used to say the '29 crash happened again, and it was just to Enron. Most people were stunned and in agony over Cliff Baxter's death but surprised, no. Just surprised it has taken this long for someone to go over the edge. Pray God this weighs heavily on the executive suite. Those children -- their father lost to arrogance and greed, what a waste.

Believe me when I tell you that many people had that same initial reaction of ending it all, until coming to sense and sensibility. And to be honest, from our point of view, my children and I are glad my husband no longer has to be there. There is the "going-postal factor" after all.

My husband is looking forward to his new job. He just wants to feel purposeful and clean, neither of which he could feel at Enron anymore. His heart is broken, but his spirit will recover. He will deeply miss his colleagues. He will miss the Enron that was five years ago and the Enron that can be no more. What is that Chinese curse? "May you live in interesting times" Oh, we are.

Anonymous,
former employee's spouse

* * * * *

*Wednesday, Dec. 12*

I am one of the few survivors still at Enron. There is the "survivor's guilt" that we remaining Enron employees face every day coming into work to a now ghost-town-like work environment when we are accustomed to constant buzz, constant activity and to be surrounded by our now missing co-workers. We are used to having to wait in lines to get through the guard stations to show and scan our badges, and long waits for elevators in the lobbies crowded with people trying to get upstairs to their desks. Now we go straight through the guard stations and right on up to our floors. Even at lunch time in the cafeteria, while there are lines, they are relatively nonexistent now.

This experience is eerily like being in a neighborhood devastated by a tornado. I am on the 6th floor of the new building, THE trading floor that the executives' offices were to look out upon. Only 9 1/2 days ago, it was packed full of energetic people working to save the company. Now there is one desk without a person, two next to it that are occupied, five more empty, one occupied, three more empty, and so forth. Suffice it to say that far more desks are empty than occupied. The entire floor has an echo.

I sent my resume, as did thousands, to Enron for approximately six months before I was laid off from another large downtown international corporation. At that point, I was so determined to prove myself and be hired at Enron that I took my chances and worked as a temporary employee, telling my agency that unless the assignment was for Enron, don't call me. I even declined two other positions with other huge corporations in downtown Houston, both paying more money, when I received an offer from Enron.

It is easy to be bitter about what has happened, but I am truly saddened by it. People have made statements about performance pressure and other derogatory statements about Enron's corporate culture. I have to say that my shock was how well everyone treats each other and how much mutual respect there is here. In the orientation room, there is a poster that states that mutual respect is a great thing to aspire to, but at Enron, it is where we begin. I have felt that the entire time that I have been here. Granted, I have been here just less than a year, but beginning as a temporary, I encoutered several different groups here. Possibly in some groups there was a cut-throat attitude, but I am in a gas trading group, and we were like one big family! We lost 25 of a 35-member family, and now we mourn for those who are gone!

I have worked in various industries in both large and small companies, and never before have I experienced the equity and equality that I feel here at Enron. Vice presidents and directors sit out in the open with their groups and next to their assistants. They are not holed-up in offices where they can close their doors to what is going on with those who work for them. Even contract security guards are treated as part of the family here.

I heard a story from one security guard that on his first day here, Ken Lay walked to the guard station feeling for his badge. He then turned around, saying "I forgot my badge" and went to the kiosk where employees who forget their badges get temporary passes for that day. He could have insisted that he be let in, saying "Don't you know who I am?" as I have seen even vice presidents do at other companies do, but he kept himself on the same level as the rest of us. Ken Lay is known for waiting for and riding the elevators with every other employee when he could take an express elevator available to him. Almost everyone in this company has passed him in the hallways with friendly greetings being exchanged, even though he can't possibly know our names.

Truly everyone here seems to care about each other, to want to help each other, and it is just a tremendous environment to work in. If you treat your employees right, then they will treat you right. That is something I always wondered why corporations hadn't figured out. But Enron knew. That is why Enron has had such a pull for "the best and the brightest", because they treat us as adults, don't micro-manage, and let us run to realize our full potential. "Entrepreneurship" has always been encouraged, and our benefits and perks were a great way to show us how much we were appreciated and that our contributiuons to the company did not go unnoticed.

I can say that the last layoff that I went through brought me joy because of the work environment. I wanted to do cartwheels! Just as happy as I am still about that layoff, I am just as deeply sad about the thought of being laid off from Enron. Not everything done by executives has been the way that it was supposed to be and should have been, but I can say that about several large companies I have worked for in downtown Houston! Am I angry at Andrew Fastow and Jeff Skilling? ABSOLUTELY! I have a friend whose husband worked here, too. She and her husband were

BOTH laid off on 12/3, leaving a family of 8 looking forward to a whopping $9,000 combined, BEFORE taxes!

How are they and the others laid off supposed to survive? And how are the rest of us supposed to cope with the uncertainty of when our turn will come? However, as foolish as this may sound to many people right now, I still believe that Ken Lay has always had our best interests at heart. Sure, he is responsible for not keeping better tabs on what was going on with those who reported to him, but that is the only culpability I see him having. He was one of the biggest forces in starting Enron, and I cannot imagine that he would want to see all of his hard work and this company destroyed.

This is all just VERY, VERY sad....there is no other way to say it!

Anonymous,
current employee

• • • • •

*Monday, Jan. 28*

I am not the Enron employee. My husband was. But he is too busy now trying to find a job to tell our story. This fall, he began looking for another job because he was tired of Enron's sweatshop work ethic and its Dark Ages ranking performance-evaluation system. He found (a new job) in mid-October and gave two weeks notice. His last day at Enron was Nov. 2. The decision had been a tough one. It required a move to Dallas, uprooting us from our home in Houston. We had both lived in Houston for at least 15 years.

Although it would be going back home for my husband, it would take me further away from my family in South Texas. We decided to make an entire lifestyle change. We have a 19-month old girl and want to have another child. So we made the decision to finally try for me to stay at home with our baby and only work part-time from home. We were really looking forward to the change. My husband moved up to Dallas and began work on Nov. 19. With all that was happening at Enron, we felt like the luckiest family in Houston. Due to my own career commitments, we decided that I would not move to Dallas until the end of February.

My husband loved his job in Dallas, working for a family-owned company with a much less stressful environment. We got a contract on our house here and were going to be making a bid on a house up there in the next few day, when on Jan. 15, our world came crashing down. My husband's new company laid off over 60 employees, out of a total of only 160, due primarily to a failed contract with an Enron subsidiary. My husband, and several other employees who were newly relocated to Dallas, lost his job.

Now, instead of me looking forward to spending more time with my baby and trying to get pregnant, I am the sole support for our family - not only the 3 of us, but my mother-in-law, too. Since the Enron employees had a 6-week jump on the local job market, my husband is going to have an even harder time trying to find a job than they are. Oh yeah - we've sold our house and have to move out, which is just as well, because we can't afford the mortgage payment on my salary alone, anyway. And we used up all of our cash in repairs made to sell the house. We have investments, but this is just not the best time to sell.

One moment we thought that we were so lucky and looking forward to a better time for our family and the next, Enron reared its ugly head to bite us, all the way up in Dallas.

Now I see that the poor Lay family is having a hard time financially. Am I supposed to feel sorry for them? Are they moving into a rental townhome that is way too small for them? Are they giving up all of their entertainment budget so they can pay bills? Is Mrs. Lay having to go to work instead of having time with her children and grandchildren?

Anonymous,
former employee's spouse

# APPENDIX AG

## *Up In Smoke Enron used political ties to rid itself of regulators. But in the end, its supposed free-market trailblazing only burned investors.*

HOUSTON PRESS (Texas)

Thursday, February 7, 2002

Section News/Featured Stories

By Brian Wallstin and Tim Fleck

Late in the afternoon of July 31, 2000, a who's who of Republicans -- Texans as well as national party officials -- jammed into elevators of a downtown Philadelphia office building, a few blocks from the GOP National Convention. When the doors slid open on the 50th floor, they spilled into the Top of the Tower banquet room for piles of pasta and prime beef, free-flowing liquor and the heady aroma of curried favor.These guests of the Enron Corporation gazed from the peak of the pink granite shaft on Arch Street onto a view that stretched into three states. In this moment, with Enron favorite son George W. Bush prepared to accept his party's presidential nomination, the party crowd must have felt they could see all the way to the White House.

Enron's shares were selling for $90 on the New York Stock Exchange that summer. Hard-driving traders at the company's electronic power emporium, Enron Online, were getting $275 per megawatt-hour in California's deregulated energy market.

The company was already the largest marketer of natural gas and electricity in the world. With the prospect of a friend in the White House, maybe even a Republican-led Congress, the future seemed to hold no limits. Politicos paid tribute with their presence to a company that had morphed itself, in only a decade, from a stodgy gas pipeline company to a self-hyped capitalist dream machine under the driving force of founder Kenneth Lay.

Lay, as a lobbyist himself in the '70s, had learned early that free enterprise works best when political wheels are greased with cash. By the mid-'90s, Enron had worked Congress and legislators in all 50 states for deregulation of everything from electricity to obscure target trading markets. The company was hailed as a pioneer, its top executives worshiped as geniuses, and Wall Street pegged its worth at $70 billion.

Bush may have called him Kenny Boy, but in Houston, Ken Lay was the man. Bonus week sent traders scurrying to Porsche dealers, renting private jets and crowding into the city's best restaurants.

The millions in campaign contributions, the lobbyists lured off government payrolls, the corporate jet he put at the disposal of elected officials, all seemed like acts of charity in his continuing crusade for less government oversight into Enron's affairs.

And two of his biggest allies had taken Enron toward that goal. Senator Phil Gramm had led the move to free the company from federal restraints in the exotic commodity derivatives markets and to exempt it from key financial reporting requirements. Wife Wendy Gramm had done her part years earlier, as a commodities commission chair who was now an Enron director.

Enron lobbyist George Strong was working the door of the Enron festivities that afternoon in Philadelphia. Strong, whose political work typically favors Democrats, recalls the rousing reception that greeted the Gramms as they stepped from the elevator at the Top of the Tower.

"When they came in," Strong remembers, "I thought, 'Wow, this is really great.' "

A company once grew up around an idea that made all the sense in the world: buy a commodity that somebody wanted to sell, and then sell it for a profit to someone who wanted to buy it. The idea was so appealing that, after hearing that the chief executive was a genius, people flocked to it.No one knew the details about who was buying and selling or how much profit was made. Occasionally some wary individual would ask, but the company would always explain that secrecy was key, since its competitors would undoubtedly steal the idea. Meanwhile, investors were mailed statements every so often, informing them that their cash contributions had increased in value.

That attracted more investors, and the company hired people to handle all the buying and selling. It paid them commissions on the profits they turned, and the employees agreed to reinvest a portion of their earnings to help the business grow.

Then, at the height of the company's success, someone took a closer look and realized the company's liabilities far exceeded its assets. Investors began to suspect the statements they received in the mail were bogus. Pretty soon there was no more buying and selling and no more investors.

In the simplest terms, that is the rise and fall of the great Enron Corporation. It is also the story of the Old Colony Foreign Exchange, started in Boston just after World War I by a former produce vendor named Charles Ponzi.

Ponzi's idea was to speculate in International Postal Coupons. For instance, a coupon bought in Spain for a penny could be exchanged in the United States for six cents. The problem was that the expenses of trading those coupons in world markets ate up Ponzi's profit. But rather than admit to a bad idea, Ponzi kept his scheme alive by using new investors' cash to pay dividends to earlier backers.

The truth emerged when it was discovered that Ponzi was part owner of Hanover Trust, which wrote the dividend checks. Auditors found the only thing keeping Old Colony solvent was the continued issuance of worthless stock.

Comparisons between Enron and the Old Colony Foreign Exchange are, of course, imperfect.

Like Ponzi, Enron wouldn't own up to its failure. When the company's top executives discovered they couldn't trade water or high-speed Internet access like oil and gas, they formed partnerships to keep losses off the balance sheets. Failed businesses were shifted onto the partnerships' accounts, which triggered loans that Enron booked as earnings.

However, this isn't called a Ponzi scheme. It's derivative financing, or more precisely, a debt-equity swap that allowed Enron to borrow from itself to cover losses and keep shares trading at a premium. Meanwhile, executives told investors the sun would rise twice tomorrow.

When Enron filed for bankruptcy on December 2, shareholders finally learned the company had created more than 870 off-balance-sheet subsidiaries.

From the formation of the first of those partnerships in 1997, 29 Enron executives and board members sold $1.1 billion in company stock. In the wake of the company's collapse, shareholders -- untold numbers of retirees and pension fund investors, including Enron's own employees -- are down $70 billion.

It may turn out to be a coincidence that the brass began cashing out at precisely the time Enron's insider trading of derivatives -- or "structured financing," as the company called it -- started to spin out of control.

But long before that, back in the beginning, there was just the Enron idea that made perfect sense. Trying to become the premiere trader in new commodities -- broadband, water, power production, pipeline capacity and more -- would take more than a mastery of this new marketplace.

Commodity and derivative dealings had been restricted by government, and for good reason. Enron, to realize its dreams, would have to first master the finer art of political influence in the highest places. When that time came, Enron chief Ken Lay was more than ready.Lay had been developing political friendships since the 1970s, when he was a minor Washington lobbyist for a Florida gas company. By the time he ascended to the helm at Enron in 1985, Lay had become a friend to then-vice president George H.W. Bush and an energy adviser to the Reagan White House.In 1985, around the time Houston Natural Gas and Internorth were merging into Enron, the Reagan-Bush administration deregulated the natural gas industry by ordering pipeline companies to sell excess capacity to whoever wanted it.

When then-Texas governor George W. Bush “restructured” the state's power markets in 1999, he was following a trend Lay had inspired in Washington and relentlessly pursued to a successful end in two dozen states.

Lay and his contributions had cultivated many political connections, but his wisest investment was in the political future of Texas Senator Phil Gramm and his wife, Dr. Wendy Lee Gramm.

Common ground was plentiful. All three emerged from modest backgrounds and went on to earn Ph.D.'s in economics. Their professional interests meshed with their philosophical sharing of a passionate distaste for government interference of any type with commercial enterprise.

The Gramms have never been known to coexist with a government regulation if they could choke the life out of it instead. Some would argue that it never occurs to the Gramms that they're carrying someone else's water, so intent are they on hauling their own.

Some of the regulations they despised the most dealt with commodity markets, which traditionally had been regulated by the government. Such exchanges post prices, maintain bid-driven markets and enforce credit standards to protect the players. The Commodity Futures Trading Commission regulates these exchanges.

The commission has less authority in dealing with over-the-counter commodity trading. Those buyers and sellers negotiate derivative contracts with banks, securities firms and broker-dealers. The terms and prices don't have to be reported to the exchanges.

Derivatives were once known as leverage contracts, which had been the tools of trade for notorious foreign-exchange scams known as bucket shops. Randall Dodd, director of the Derivatives Strategy Institute in Washington, D.C., explains that exchanges regulated by the government, such as the New York Mercantile Exchange, have avoided major collapses through oversight.

"They trade these same derivatives contracts on the NYMEX," Dodd says. "Those markets work fine because everyone is holding capital, there is government surveillance, there are reporting standards -- all these safety provisions that prevent it from failing."

Congressional action in 1978 locked the over-the-counter market down to three companies limited to the unregulated speculation in precious metal futures.

The Gramms and other deregulation supporters argue that over-the-counter derivatives constitute capitalism at its purest. In fact, in the traditional open-cry pits found at the Chicago Board of Trade and NYMEX, Enron wouldn't have found a market for hangar slots. But off-exchange, the theory goes, if someone can turn something into a commodity, the buyers and sellers will appear.

OTC derivatives also allow institutions like insurance companies and pension funds, as well as wealthy, sophisticated individual investors, to assume more risk. They can invest in newly created markets or play more aggressively in familiar ones.

Enron's transformation from a pipeline company began in 1989, when it and other companies began lobbying to open up the over-the-counter derivatives market. Lay's strongest ally was in a prime position to help: then-president George H.W. Bush had just appointed Wendy Gramm to chair the Commodity Futures Trading

Commission. She quickly issued a lengthy report that argued to reduce CFTC oversight of certain commodity trading.

Two years later, Gramm led the push to open the door for Enron even wider by heading the effort to exempt over-the-counter derivatives from commission control. That allowed Enron to break free of the spot market for natural gas. It also enabled the company to customize derivative contracts for customers looking for long-term price stability in the market.

Gramm had previously announced she would be leaving the commission. A week after delivering the rule change for congressional approval, she departed.

Five weeks later, Gramm had a new position: Lay appointed her to Enron's board of directors. The position paid about $30,000 a year, plus stock options. One CFTC member called the timing "horrible." Lay told The Washington Post that it was "convoluted" to suggest Gramm was brought on board for any reason other than her brilliance.

"Her knowledge of the derivatives market is a big plus for Enron," Lay said. "There aren't that many people who really understand that business."

However, the corporation itself would soon be wondering how well it understood business in the vastly broadened markets delivered through deregulation.Enron's extended leg room in the over-the-counter market brought it trouble almost immediately. In 1993, TGT, an Enron subsidiary in Great Britain, entered into a "take or pay" contract with companies pumping natural gas from the J-

Block field in the North Sea. Enron agreed to take 260 million cubic feet of gas per day for ten years to supply one of its own power plants and to sell to others.But when the contract matured and Enron had to take delivery, demand for natural gas was down and the price had dropped by half. Enron tried to litigate its way out of the mess, but a British court ruled that the meaning of "take or pay" was pretty clear.

The failed deal cost Enron $537 million in 1997. Bob Young, a derivatives consultant with New York-based ERisk, says the massive loss should have raised concerns inside the company.

Young believes that trading in the "short end," meaning locking in prices for three to five years, is a safe bet because everyone has the same idea what the commodity will cost in that time frame. But he explains that there are no markets for pegging prices in the more distant future, such as 15 years out.

"No one knows what the price is going to be," he says, "so you have to base it on expectations, which can change."

In retrospect, the J-Block debacle appears to be just one of many problems Enron faced in 1997. After all, that's when it formed the first of its subsidiaries to shield transactions from the balance sheet. One of the more infamous was called LJM, for the initials of CFO Andrew Fastow's three children.

The J-Block contract suggested to Young that Enron wasn't managing its trading books closely enough. Traders are supposed to adjust the value daily on long-term contracts, a practice called mark-to-market accounting. A responsible trader will watch for price decreases that reduce the long-term value of contracts. If that happens, the trader will try to hedge the lost value by making another trade that promises a better outcome.

The flaw in such accounting of unregulated derivatives was the potential for a harried or unscrupulous trader to inflate long-term contract values, knowing no one outside the company would have access to the information. Traders for any company might decide to impress their bosses or increase their bonuses by setting unrealistic future prices, then simply ignoring any subsequent changes in the commodity's price.

"It's a real conflict of interest," Young says. "A trader can set the market almost however he wants, then manipulate the market value to his own benefit. He just tells his boss the trade has been booked and he wants to be paid for that value now."

Whatever problems were escalating within the walls of Enron's far-flung enterprises, the exterior looked sleeker than ever. The corporation concentrated more and more resources into the heady stuff of derivatives trading. It invested in broadband, coal, water, pulp, paper and more. World market analysts were wowed by the new and novel initiatives into expanding economic markets.

Executive Jeff Skilling showed the brash style with personalized license plates -- WLEC -- for "world's largest energy company."

As that target came within Enron's sights, there were a few pesky chores to be taken care of first. Creative bookkeeping had spawned more and more sleight-of-hand subsidiaries to mask accurate numbers from corporate balance sheets. And government was trying to get in the way again, this time with the audacity of proposals to require proper accounting and oversight to the wide-open field of derivatives.

Lay would soon be returning to the front to break more regulatory leashes. This time, he was better armed than ever with political largesse.The Enron chairman had invested his massive campaign contributions wisely. While he'd made it clear that one of his goals was a GOP majority in Congress, he would put his money on Democrats when there were no viable alternatives.Lay is conservative, but "he is not some right-wing nut," says Enron fund-raiser Sue Walden, a loyalist who stays in regular contact with Lay. "He is pragmatic in 'What do I need to do on the PR end to achieve my goals?' "

"Lay concluded early on, as any smart lobbyist does, that it doesn't do any good to support somebody that might be right ideologically but can't get elected," says former Enron lobbyist and consultant George Strong, who has known Lay for a quarter-century. "With very few exceptions, you'll find that Enron was pretty astute on making decisions on who to give money to."

As unlikely as some of those decisions seemed at the time, they paid off. Sheila Jackson Lee, arguably the most liberal member of Congress and inarguably the most vocal, became a Ken Lay "project" in her upstart 1994 race for the 18th District. As her fund-raising chairman, Lay rallied the Houston business community to join her against their common foe, incumbent Craig Washington.

"We all had to give $250 to get rid of Craig," says a Lay associate. "But she was a pain in the ass to him." The source says that after her election, Jackson Lee would call Lay "two or three times a day trying to get us to hire her cronies for big money."

Freshman Houston Congressman Ken Bentsen also knew the influence wielded by Lay and Enron. The Democrat got jolted in November 1996 when Lay unexpectedly jumped ship to endorse his Republican runoff opponent, Dolly Madison McKenna, for the 25th Congressional District. "He was probably the senior corporate citizen in Houston," says the congressman. "And they were the go-to people. He was the go-to guy."

The Enron chairman explained to reporters at the time that he simply had allegiance to McKenna, an old family friend. That was coupled with his fears that Bentsen's substantial labor backing would inevitably drive him to the left.

After Bentsen beat McKenna, Bentsen waited for Lay to apologize for the flip-flop. He thought it was coming several months later when an Enron staffer called and asked if Lay could meet with him.

"Being the nice gentleman I am, I say, 'Sure. Come on over,' " Bentsen chuckles. "So he comes in and sits down. I keep waiting for him to say, 'Oh, we had a disagreement but you won, and we want to try and work with you.' "

According to Bentsen, Lay talked about the need for energy deregulation but never mentioned the election, as if it were some faux pas between friends unworthy of comment. In 1997, Bentsen received contributions of $1,000 each from Lay and his wife, and $500 from the Enron PAC and a Lay-hosted fund-raiser. All in all, it was an implicit apology that probably spoke more eloquently than anything Lay might have said face-to-face.

Enron and its leader went on to give a total of $45,000 to Bentsen in the '90s, the highest amount it contributed directly to any member of the House of Representatives.

Lay and Enron, in fact, became synonymous with political contributions and candidates, mostly Republican, who regularly made pilgrimages to Houston to fill up their campaign tanks.

Sue Walden remembers all the calls from officeholders requesting that Lay host Houston fund-raisers. "A lot of elected officials on the federal end think Houston is a cash cow because we have the oil and gas industry here and they want a way in. Especially those on oil and gas, natural resources, deregulation, those sorts of committees, would come to Enron and ask Ken to host an event."

"Ken would do it," Walden explains. "It's hard to say no to a sitting senator or congressman."

Eventually the feeding frenzy became too intense. Walden says she had to try to shield the chairman from the ceaseless demands. "I'd say, 'Ken is just overused on this right now, let's give him a break. Find someone else, and I'll get Enron to help.' We'd go that route. I'd try to protect Ken a little bit, because you can't go to the well too many times."

Lay's much-touted role as one of the $100,000 pioneers for Bush's presidential campaign is not quite what it seems, says the fund-raiser. When the deadline came for contributions, the chairman was still a bit short.

"He hadn't made it yet, so I transferred $30,000 or $40,000 from my [fund-raising] account codes to him so he could get pioneer status on this big event day," says Walden. Fund-raiser Heidi Kirkpatrick worked with Walden, concentrating more on Democrats.

"It's like you visit Houston, and you visit Ken Lay," says Kirkpatrick. "He was pretty much the top target for fund-raising on both sides of the aisle."

While Bentsen may have been a big individual recipient, Enron's real go-to guy in the House was Sugar Land Republican Tom DeLay. According to an Enron source, DeLay was particularly aligned with the new Enron order under Jeff Skilling.

"Skilling and DeLay think the same on 'dereg': They are free enterprise, open markets, they believe it," says the source. "There's just a natural bond, plus DeLay is majority whip."

But the fight against reporting requirements would require a well-connected Senate commander, Phil Gramm of Texas.Senator Gramm first attacked the Financial Accounting Standards Board, which had recommended that derivatives be included on companies' balance sheets. At a Senate banking committee hearing in 1997, Gramm challenged FASB chairman Ed Jenkins to reach a "broader consensus" from the business community. Jenkins replied that the standards board held 123 public meetings before concluding that reporting practices for derivatives were inconsistent, allowing different companies to report the same transactions differently."I don't question that you've had extensive hearings," Gramm snapped. He recited a list of opponents to the FASB standard, which included Chase Manhattan Bank and Citicorp. "Are these people against the public's right to know?. . .If we are going to maintain generally accepted accounting principles, part of your job, it seems to me, is getting general acceptance."

"The focus of the FASB is on consumers," Jenkins argued, "users of financial information such as investors, creditors and others." He explained that corporate reports need to give accurate finances and "not influence behavior in any particular direction."

Soon after, Wendy Gramm told the House banking committee that derivative markets would suffer from "unnecessary or overly burdensome regulatory costs." Gramm, a professor at George Mason University's James Buchanan Center for Political Economy, described her views as "comments that reflect the public interest rather than any special interest."

What she didn't put on record, however, was any mention of her job as paid director for a company that planned to become the world's largest corporation by dealing over-the-counter derivatives. Gramm is currently on the board of two other firms that put investor funds to work in the derivatives market: Invesco Funds and Longitude, a company that develops software to help dealers keep track of prices and trading positions.

In 1998, antiregulation forces advanced with the GOP's new majority in both the House and Senate. Phil Gramm was elevated to chairman of the Senate banking committee, which oversees legislation on any financial regulations.

Merton Miller, an economics professor and 1990 Nobel-winner, told a roundtable discussion in spring 1999 that the Texas senator would be influential with the Securities and Exchange Commission in weakening financial derivative controls.

To unanimous agreement, Miller said that the way to weaken such regulations was "not by rational arguments, of which we have immense numbers. But by a fellow named Phil Gramm. . ." To persuade the SEC "to take this medicine," he said, "you've got to be able to get to the supervisor of [SEC Chairman] Arthur Levitt, who is, in effect, Phil Gramm, and I think you can fully expect him to listen."

As the general, Gramm raked in enormous contributions from those who stood to gain the most from derivatives deregulation: Enron and those in the banking and securities industry.

Enron donated more than $100,000 in individual and corporate contributions to Gramm's political campaigns, including $10,000 from Ken and Linda Lay, according to the nonpartisan Center for Responsive Politics. (Lay was also regional chairman of Gramm's failed presidential bid in 1996.) The banking and securities industry provided him with more than $2 million since 1989.

Michael Greenberger, the former chief of the CFTC's trading and marketing division, says the debate over off-exchange derivatives has been smothered by special interests. Even modest attempts to study the issue trigger a rush of lobbyists to Capitol Hill.

"The Enrons of this world, the investment banks, the commercial banks individually and through trade associations, are lobbying the congressional branch and the executive branch and whoever they need to lobby 24 hours a day, seven days a week for this kind of stuff," says Greenberger.

Enron, tasting victory, launched Enron Online. The computerized trading platform would standardize the company's long-term derivatives contracts, to close such deals in seconds rather than the hours formerly needed. That would increase trading volume exponentially.

That online debut was diminished by a November 1999 White House capital management task force report recommending more financial disclosures from hedge funds. The report also recommended proceeding slowly with unproven online markets such as Enron Online. And then-futures trading commission chairman Brooksley Born also echoed those sentiments about derivatives trading.

Gramm argued that risk to individual investors was small. It is up to institutional investors, such as banks, to make sure their money is safe, he explained. "People who lend money ought to know who they're lending money to," he said at the time.

Fueled by objections from the securities industry to the continuing debate, Gramm led an effort to impose a moratorium on new derivatives regulations. That ended in May 2000 when the senator agreed to co-sponsor the Commodity Futures Modernization Act.

Gramm signed on to the bill after the original sponsor, Senator Richard Lugar of Indiana, agreed to amend it to allow sweeping deregulation of the over-the-counter derivatives market. The bill also exempted companies that trade derivatives electronically, such as Enron Online, from disclosing details of trades. It became known as the Enron Exemption.

In December 2000, five months after Phil and Wendy Gramm made their triumphant entry into Enron's reception in Philadelphia, then-president Bill Clinton signed the measure into law.

Some of the derivative-trading ranks hardly celebrated the supposed victory. The nation's established commodity exchanges tried unsuccessfully for a provision that would allow them to compete with Enron in limited over-the-counter commodity markets.

"To be perfectly frank, in my opinion, Enron's behavior in this instance was completely shameless," says Neal Wolkoff, executive vice president of the New York Mercantile Exchange. "It was just obnoxious. Every time I called a congressional aide or one of the committees to offer some input, they said the same thing: 'I'll have to run it past Enron and Goldman Sachs first.' We were trying to be heard and were just getting blown away."

"Enron came across as these flaming capitalists, but they wanted a monopoly," Wolkoff recalls. "They said, 'Keep the government out of my face and my No. 1 competitor at a disadvantage. Then we'll be a competitive company.' "Enron had, indeed, been very successful in keeping government out of its affairs, beginning with natural gas deregulation in 1985. But whatever opportunities the company once saw in an open marketplace were squandered during its transformation from a real business into "an old-time Wild West casino gone crazy," says Greenberger, the former futures commission division chief.But rather than walk away from the table down a little, Enron upped the stakes. The over-the-counter futures franchise it won from Congress gave traders the power to place even more bets on a house account that had already been drained.

Publicly, though, Enron had plenty of bluff left in it. With its shares trading at a respectable $84 last year, newly named CEO Jeff Skilling nonetheless chided a group of analysts, saying shares should have been selling for $126.

Pressures increased for the company to explain indecipherable accounting that had kept massive debts off the balance sheets. "We don't want anyone to know what's on those books," CFO Andy Fastow said at one point. "We don't want to tell anyone where we're making money."

Or where they were losing it. In late March, a deal to distribute Blockbuster videos over the Internet via Enron Broadband collapsed. Then the company revealed it was owed $570 million by the bankrupt California utility company Pacific Gas & Electric. Worse, analysts started questioning the company's ethics after Fastow's financial stake in Enron's off-balance-sheet partnerships was revealed.

In mid-August, Skilling stepped down as CEO after just seven months. Shares had sagged to $43. Lay returned as interim CEO and, in a series of meetings and e-mail messages, urged employees to continue "talking up" Enron. Lay himself, on the other hand, was bailing out, eventually cashing in more than $600 million worth of shares. Meanwhile, employees were locked out of liquidating pension shares as the price plummeted even faster.

When the SEC began investigating the company in October, Enron shifted more than $1 billion in losses back to its balance sheet, then admitted another $1.2 billion write-down was on the way.

Enron's trading operation stalled under the revelations. Suddenly there was no more buying and selling.

The biggest corporate collapse in history reached its stunning nadir with the December 2 bankruptcy filing. More than 4,500 people were laid off.

It could take years of forensic accounting to pin down how $70 billion disappeared. But this much is already known: Enron was an energy company like the Money Store is a U.S. mint. The company might have owned 37,000 miles of pipelines, but it had leveraged its value making markets where none existed.

Which, of course, isn't a crime. But it isn't a very good idea, either.The formal exercise in assessing blame is under way in a dozen governmental venues. On January 24, members of the House Governmental Affairs Committee grilled executives from Arthur Andersen, Enron's accountants, over the shredding of Enron audit records and conflicts of interest as both company consultants and auditors. Andersen pointed fingers at Enron for misleading auditors, and at the legal giant Vinson & Elkins for endorsing suspect bookkeeping practices and helping to create the troublesome partnerships.An Enron probe led by University of Texas law professor William C.

Powers suggested massive financial fraud. Lay canceled scheduled testimony before a Senate panel after the Powers report came out. His likely defense -- and that of other executives -- is that he wasn't involved in the decisions that came to devastate the Enron empire. The appearance of his mournful wife, Linda, on national television indicates the spin control has begun on what has already spun so out of control.

Because Wendy Gramm is married to the ranking Republican on the Senate banking committee, her public inquisition should highlight the agenda.

High on the list of questions for investigators is why she and other Enron directors agreed to waive an ethics policy so executive Fastow could arrange a stake in the company's silent subsidiaries, and whether or not she knew they were used to inflate earnings. Someone will ask if her fiduciary duty to shareholders may have been compromised by the $915,000 to $1.8 million in salary, fees, stock options and dividends she received since joining Enron's board in 1993. (The figures are from SEC filings reviewed by Tyson Slocum of the D.C. watchdog group Public Citizen.)

Other inquiries may center on whether Gramm's appointment to the Enron board was a payback for being such a strong supporter of energy derivatives and unregulated commodity trading. One question to be posed is how much, if anything, Wendy Gramm shared with her husband about what Enron hoped to gain from Congress.

And what she knew as a member of Enron's auditing committee.

The senator told a reporter recently that "most of the time," he and his wife talk about household chores and college football. Gramm has denied that his decision not to seek re-election, made less than a month after Skilling's departure, had anything to do with Enron. Public Citizen's Slocum isn't so sure, saying the timing is more than coincidental.

"Enron would have been a major campaign issue," he says. "The Democrats would have gone ballistic: 'What? Your wife was on the board of directors? She was on the audit committee? Why didn't you protect these workers who were laid off?' "

"Any potential for criminal investigations into his wife would have been a major liability and might have become a major scandal," Slocum says.

Enron's massive political donations and friendships -- the Center for Responsive Politics says it failed to report $1.6 million in contributions last year -- have muted some of the backlash. For example, Congressman and senatorial candidate Bentsen says the relationship of the Gramms to the company may have been an "uncomfortable situation." But he says he has "every confidence" that they followed the rules.

"There's no instance here I see where Enron was in a situation with a regulator that was giving them a hard time, or affecting their business such that they were saying back off," he says. Executives "called the White House when they were in trouble, but the White House, to their credit, demurred."

Others say the Enron-fueled deregulation made government derelict in its role as watchdog for the unbridled trading markets.

"The collapse of Enron makes it plain that the key gatekeeper institutions that support our system of market capitalism have failed," Frank Partnoy, a law professor and former Wall Street derivatives trader, told a Senate panel. "The institutions sharing the blame include auditors, law firms, banks, securities analysts, independent directors and credit rating agencies."

Banks and investment firms like J.P. Morgan, the United Bank of Switzerland and Lehman Brothers, who contributed $2.1 million to Phil Gramm in the last decade, are first in line to divvy up the carcass that was once Enron. Then they'll go back to investing their clients' savings in an unregulated $95 trillion financial market where people bet on the weather and the availability of aircraft hangar spots in London.

"The 'Who Shot John' over the politics of all this, I think, is beside the point," says former white-collar prosecutor Michael Greenberger. "What I think we have to worry about is that, because [derivatives] are only brought to people's attention when there is an emergency, nobody knows how many more companies are out there trading these things. Nobody knows whether there are destabilizing trades that are being made that could bring other corporations down as well."

The latest revelations indicate that Enron's own board may have already known of the questionable financial and accounting practices 18 months ago -- at the GOP convention reception where they and the rest of the free-marketeers saluted George W. Bush and the Gramms. Loyalists and their political allies had a damning descent from the luxurious trappings they savored in their time at the Top of the Tower. But their legacy of deregulation means plenty of others are still jostling in line for that dizzying ride to the top.

# APPENDIX AH

## *Enron's bankruptcy could leave nonprofit community in a bind*

THE HOUSTON CHRONICLE

Wednesday, February 13, 2002

2 STAR EDITION

Correction Appended

Section HOUSTON, page 1

By Staff, Shelby Hodge

WHEN Enron imploded last fall, it left not only a hole in life savings and 401(k) plans, but it also left a $ 10 million crater in the local nonprofit community.

Rachael Tobor, Enron director of employee communications, said Tuesday that the company had budgeted $ 10 million for community relations for 2002, the same figure as for 2001. In the wake of Enron's bankruptcy, that budget was not approved.

She said that letters had been sent to each of the nonprofit organizations on Enron's gift list explaining that previously committed funding would not be forthcoming.

Taking the biggest hit is the United Way. Tobor said that the $ 10 million total includes the $ 3.1 million that corporate had allocated for the United Way employee-match program.

Bits and pieces of information have surfaced in recent months regarding an Enron charitable shortfall here, a commitment unmet there. But no one has put all the organizations and dollars together. Enron declines to provide specifics of its unmet charitable commitments. However, an unofficial and unsigned list offering an overview is circulating among corporate community development offices.

Titled "Detail of Other Outstanding Commitments in 2001/2002," the list contains numerous entries and a tabulation of $ 5.1 million in commitments that will go unmet. The Enron name does not appear on the paperwork; however, recipients believe that it originated from within the bankrupt energy firm.

A check of many of the agencies listed revealed various levels of financial loss due to Enron's departure from the charitable playing field.

A spokeswoman for the American Red Cross said that her agency had received a three-year, $ 300,000 pledge from Enron in 2000. The 2001 donation of $ 100,000 was never paid, and the 2002 commitment will not be met.

The University of Texas M.D. Anderson Cancer Center received written notice from Enron that the remaining $ 600,000 on a $ 1.5 million pledge that was made in 1993 would go unfulfilled.

The Children's Museum was informed by Enron that the $ 65,000 committed for the premiere of the exhibition My Planet Earth will not be forthcoming. The American Heart Association is especially hard hit. Enron had committed a now impossible $ 350,000 for events ranging from the Heart Ball to the annual charity golf tournament.

The $ 10,000 Enron had promised Da Camera for its recent gala never materialized, and Enron has withdrawn its offer to fund a $ 10,000 table at the American Cancer Society's Cattle Baron's Ball.

While many of the nonprofits are moving on and finding other donors, the Alley Theatre is planning to file a lawsuit (SEE CORRECTION) for the $ 75,000 Enron had committed in contract for the Barbara Jordan Project, a speech and essay contest for young girls.

"We have no illusions that we'll see any of that money, perhaps 10 cents on the dollar. . . . But we will file. What do we have to lose?" said Paul Tetreault, Alley managing director.

The circulated list included the Barbara Bush "Celebration of Reading" event with a donation entry of $ 80,000. While there was no firm commitment of that amount to the benefit, $ 80,000 was given last year. That same amount would most likely have been given this year had Enron not failed, according to David Jones of the Dini Partners, which organizes the event each year.

"It would not have been unusual for us to have received a letter about now from Enron informing us of a donation," he said. At this point, Jones is not anticipating any Enron money.

Despite the absence of funds, Tobor said, her office remains a viable entity at Enron, helping various charities find other means of fund raising and working with Enron employees on their various volunteer commitments. She is optimistic that Enron will emerge as a new, strong company able to again be a player in the local nonprofit scene.

Enchanted evening

Da Camera of Houston understands the elements of the ideal fund-raiser - cocktails, conversation, a little night music, a silent auction and brief comments.

Even as the invitations for last Saturday's benefit dinner were being mailed, the event at the Bayou Club sold out. Dinner chair Richard Morgan of Duke Energy attributed the early success to "good friends" and Da Camera's "devoted following." Others also attribute it to the fact that Da Camera combines the right amount of sophisticated entertainment with a minimum amount of verbiage. Not only is the evening painless, but it is also infinitely pleasurable.

Morgan, creative director Sarah Rothenberg and executive director Mary Lou Aleskie were crowing over the fact that even before the auction proceeds had been tallied, the 2002 event was $ 35,000 net above the gross proceeds from 2001. Bravo.

CORRECTION-DATE: February 18, 2002

CORRECTION: The Alley Theatre is not filing suit against Enron for its default on a $ 75,000 contract. In a much less aggressive move, the Alley is merely filing for its due with the bankruptcy court hoping to gain even a small portion of the promised funds.

# APPENDIX AI

## *The fall of Enron; A bite out of business; Eateries, coffee bars formerly flush with cash of Enron workers find business dropping off as its regulars dwindle*

THE HOUSTON
CHRONICLE

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By Staff, Janette Rodrigues

Sweet Treats co-owner Amin Momin picked up a ringing cordless phone. On the other end was an Enron secretary who needed cookies and brownies for a meeting, ASAP.

He folded some flat pieces of white cardboard into boxes and filled it with treats. Ten minutes later, he delivered it to Enron Center.

Three months ago, Momin routinely made an extra $ 100 to $ 200 a day delivering goodies to the gleaming glass tower at 1400 Smith.

"I would drop everything," said Momin, recalling the days when Enron was free-spending and high-wheeling.

Many of the eateries frequented by Enron workers are still reeling in the wake of the company's collapse. Some say revenue is down from 20 percent to 50 percent.

Enron kept employees and business clients well-fed. Food catered by local restaurants and hotels was brought in daily for the trading floor, meetings and working lunches.

Many Enron workers weren't exactly brown-baggers, and spread some of their disposable income among tunnel food courts and nearby street-level restaurants.

Everything changed when Enron filed for bankruptcy in December and laid off 6,500 employees worldwide, including 4,700 in Houston, most of whom worked - and lunched - downtown. A company spokesman said those numbers don't include contractors.

"I didn't think it would affect us that much," said Drew Crispin, owner of The Coffee Bar at Three Allen Center. "Most of the Enron people would go across to a Starbucks clone in the Marriott."

Until the foot traffic through Three Allen Center fell off, he didn't realize that many of his regulars were Enron contractors, hundreds of whom worked in the Allen Center office complex. The office space emptied by the layoffs was roughly equal to that of a 30-story building.

"My business here is down probably 50 percent from this time last year," Crispin said.

Three months ago, neither man would have thought twice about about taking a credit card or a check drawn from one of the company's corporate accounts.

Then Enron checks started to bounce. The company stuck Momin with $ 800 worth of bad checks, and Crispin with $ 300.

Now both take only cash or personal checks from company employees for catering orders. Momin is willing to let them charge kolaches and chocolate chewies to personal credit cards.

Business is still down 40 percent to 50 percent at Bouray's Burrito Bar, a Tex-Mex restaurant across a five-cornered intersection from Enron Center.

"I hope I have enough money to pay for rent," said John Ho, Bouray's owner.

Restaurant retail space in older buildings in the Enron area costs from $ 15 to $ 20 a square foot, and the newer buildings charge even more, said Massa's restaurant owner Michael Massa.

Bouray's rent is $ 4,000 a month. Normally, that was not a problem. Ho had so much foot traffic during the lunch rush that he needed six employees behind the counter.

Like clockwork, the Enron crowd would start queuing up at 11 a.m. By 11:30 a.m., the line would be out the door.

One day last week, Bouray's was empty at 11 a.m. Ho had to lay off three workers.

He hopes the new Enron Center South building and the office space vacated by the company will fill up with new tenants soon.

Bouray's shares the bottom floor of the Regency Parking Garage at Polk and Smith with several other restaurants, including the New York Pizzeria and Droubi Bros. Mediterranean Grill.

The pizzeria and grill experienced a drop in business, including Enron-related catering, but they have weathered the storm better than others.

The grill opened a new location in the tunnel in the Bank One area. The pizzeria has a new location in Midtown.

"It's a good thing we opened that other location," said Bob Droubi, grill co-owner. "Business is off here about 25 percent - not a huge amount. But the Enron workers were real good customers. We saw some of them every day."

Last week, a customer came in and told Droubi she's glad the lunch rush is no longer such a madhouse.

New York Pizzeria owner Anthony Russo didn't have to lay off workers. But he might have had to if he hadn't opened the new location that focuses more on delivery sales than diners.

"Our business downtown is down 15 to 20 percent," he said, adding that he sees a lot fewer Enron corporate credit cards.

New York Pizzeria saw a lot of foot traffic from Enron at lunch and dinner as well as pizza deliveries to the trading floor.

"We're now focused on catering to other businesses," Russo said. "So it all balances out at the end of the mouth, but it's not like it was."

Massa's Restaurant, located a few blocks down Smith from Enron, suffered a minor setback when Enron canceled two small Christmas parties of 20 to 40 people.

Other than that, the layoffs haven't affected the 60-year-old restaurant as it has others, Massa said.

"Business for the first two months of the year is up 13 percent," the restaurateur said. "We anticipated some drop, but it didn't happen."

He called the double-digit increase unusual. He attributed it to the restaurant's focus on a corporate clientele and hotel business.

Enron didn't bounce any checks at Massa's, but the company does owe New York Pizzeria about $ 1,000 for catering, and Droubi Bros. roughly $ 2,000.

Russo has turned the matter over to a collection agency. Droubi received notice from a lawyer that he may be able to get 10 cents on the dollar.

"I'm a small fish in a big line," Droubi said of Enron's creditors. "I'm never going to see that."

# APPENDIX AJ

## *Living in a House of Cards Rank-and-file employees suspected something was wrong at Enron. Now they want someone to pay.*

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Section News/Featured Stories

By Brian Wallstin

Last August, shortly after returning as chief executive officer of Enron Corp., Ken Lay sent an e-mail to employees asking them to "Lay It On The Line" and answer a few questions about the company. Within days, Lay received more than 4,000 responses from around the world, covering issues that ranged from Enron's share price to its employee evaluations to its image beyond the corporate walls.The results were analyzed, and in early September, Lay answered back by outlining a course of action that would, as he put it in an e-mail summary of the "Lay It On The Line" survey, "keep Enron one of the best places to work in the world."

At the heart of Lay's plan was information. In an effort to be more up-front about the company's operations, he wrote, top executives had already met with major shareholders to review "the strong prospects in each of our businesses." Stock market analysts, who for the first time in years were questioning Enron's complex balance sheet, would be educated on "how we make money."

This new spirit of openness would be extended to employees. Lay invited them to attend "brown bag" sessions to discuss issues that affected Enron's share price. In mid-October, Lay and Greg Whalley, president of Enron Wholesale Services, would begin meeting with groups of employees in events that would be videotaped and distributed company-wide. In the meantime, employees were encouraged to log on to the company's internal Web site and join a question-and-answer forum with the CEO.

"We recognize that as Enron's ambassadors in the marketplace," Lay wrote in the summary, "the more you know about our strategy, performance and challenges, the more you can help disseminate accurate information about our company."

It's now known that what Wall Street didn't understand about Enron late last summer had already doomed the company. On October 17, the seventh-largest company in the United States stunned shareholders by reducing the value of assets on its books by $1.01 billion to correct the accounting treatment of off-balance-sheet partnerships managed by chief financial officer Andrew Fastow. Less than two months later, Enron laid off 4,500 employees and filed for bankruptcy protection.

After a three-month investigation, a special committee of Enron's board of directors reported that management had purposely misled shareholders by hiding huge debt and poorly performing assets in Fastow's partnerships. Committee chairman William C. Powers, who was hired by the board to conduct the investigation, told a congressional panel that between July 2000 and October 2001, 70 percent of Enron's reported earnings were fabricated.

"What we found was appalling," Powers testified.

To date, three former Enron employees have stepped forward to corroborate the findings in the Powers committee report. Sherron Watkins, an accountant whose now-famous letter to Lay in August warned the CEO that the company was about to "implode in a wave of accounting scandals," testified before a congressional committee last month, opposite former CEO and president Jeff Skilling. Watkins went easy on Lay, and suggested he was clueless about the import of the transactions. But she had little trouble convincing lawmakers that Skilling was lying when he said he knew nothing of Enron's dire financial condition when he resigned "for personal reasons" August 14.

Margaret Ceconi, a deal originator with Enron Energy Services, told Lay in an August 29 e-mail that the division had hidden more than $500 million in losses on long-term energy contracts.

Ceconi tipped off the U.S. Securities and Exchange Commission for the first time last July, then followed up with a detailed complaint in October. She has not yet been called to testify, nor has she been questioned by investigators. Ben Glisan, Enron's former treasurer, reportedly is cooperating with the Department of Justice after being implicated by the Powers committee.

The congressional inquiries have, so far, focused on the actions of Lay, Fastow and Skilling; the company's auditor, Arthur Andersen LLP, which was indicted March 14 on federal charges of obstructing justice; and its general counsel, Vinson & Elkins, whose internal investigation of Enron's accounting practices has been derided as a whitewash. The unrestrained outrage of lawmakers has been fueled by the presence of a ready pool of victims -- Enron retirees and former employees whose retirement plans were laden with now-worthless Enron stock.

The breathtaking losses -- Enron's 401(k) plan was worth $850 million at one point -- and the apparent fraud by top management have inspired more than a half-dozen shareholder lawsuits, including a class action by the Severed Enron Employees Coalition, a group of about 600 people whose former positions ranged from secretaries to division vice presidents.

One of the coalition's founders, Diana Peters, an information technology specialist, planned to take advantage of Enron's early retirement program in three years so she could care for her husband, who is suffering from a brain tumor.

Unlike many, Peters had the presence of mind to move some of her 401(k) assets into mutual funds. What she didn't realize was that when Enron's share price fell to less than a dollar, leaving her 401(k) account with a negative balance, her mutual fund was tapped to make up for the shortfall. Left with no health benefits to cover her husband's treatment, Peters had to take the first job she was offered. She says it's a good one, but that's hardly consolation.

"I want money from Arthur Andersen," she says. "I want money from Vinson & Elkins. I want money from Jeff Skilling and Andy Fastow. I want money from the board of directors. And I want somebody to go to jail."

Support for Peters and other rank-and-file employees has been universal -- almost. In early March, Michael Lewis, an author and columnist for Bloomberg News, suggested that employees should be among those held accountable for the Enron debacle. Calling them "expensive beggars," Lewis compared employees to the getaway driver for a failed bank heist who lays claim to his share of the take confiscated by police.

"[E]verything we know so far about Enron suggests many, many employees were, at the very least, willing accomplices to the schemes dreamed up by their bosses. And now they want their money back!" Lewis wrote in a column that appeared in, among other publications, The Washington Post. "The Enron case as it is currently playing out sends the following message to corporate employees: You aren't responsible for what you do.

. .[So] long as you aren't one of the top bosses, you will enjoy the moral status of the victim."

Indeed, after reviewing the now-familiar partnerships, the Powers committee concluded that "literally hundreds of people. . .were involved in one way or the other in the transactions." Watkins told Lay that deceptive accounting was an open secret at Enron. "We're such a crooked company," she quoted one co-worker. During the company's internal investigation, Watkins told Vinson & Elkins attorneys that she was worried that as many as 300 employees with knowledge of the transactions would start talking to journalists, the SEC or both.

Watkins also pointed to the "Lay It On The Line" survey as a possible source of corroboration. She told the V&E lawyers that two employees involved in the survey said questions about accounting issues were not reflected in Lay's summary. Watkins suggested that a legal assistant could "plow through" the responses to find out how widespread the concerns were, although there is no evidence that either V&E or the Powers committee ever did that.

Nonetheless, according to the survey's results, many respondents were aware that something was indeed rotten in the state of Enron. Nearly one in three respondents told Lay they thought Enron had become less ethical during the previous 12 months. Almost 40 percent considered the company more arrogant and less trustworthy, while far fewer than half the respondents believed senior executives possessed "a clear view of where Enron is going and how to get there."

Lay skillfully dodged those concerns in his summary, instead noting that "Lay It On The Line" confirmed the "great things you feel about Enron." According to Lay, Enron's stock price, which had been cut in half since January 2001, was the No. 1 concern of the 4,000 respondents. He blamed the decline on several factors: the recession, the slower-than-expected pace of electricity deregulation, a marked decrease in natural gas prices and a "meltdown" in the high-speed Internet, or broadband, industry, which Lay estimated accounted for more than a third of the company's stock price at its peak a year earlier.

But by last summer, many employees were wondering how Enron stock ever got as high as $90 a share. "People were aware that the stock was overvalued, that the earnings being reported did not reflect reality," says Michael L. Miller, a former vice president with Enron Wholesale Services. "There was more uncertainty than people [outside the company] perhaps appreciate."

Why that hasn't translated into more people offering up evidence to prosecutors is a question some former employees have asked themselves. Michael J. Miller -- not to be confused with the Enron Wholesale executive, Michael L. Miller -- says that as the investigations grind forward, he expects more former employees to contribute to the prosecution of those responsible, many by offering firsthand accounts of wrongdoing.

"That's the way they are going to weed out a lot of the facts, by corroborating evidence, having people step forward who are credible and in a position to know what was going on in the machine," says Miller, whose tenure at Enron dates back to before it emerged from the conglomeration of Houston Natural Gas and Internorth in 1985. "I don't know how five people could have pulled this off."Testimony and evidence from a broad range of former employees may also keep them in the hunt for whatever is left once Enron's bankruptcy runs its course. While the rank-and-file employees of failed companies are rarely given much consideration -- or at least no more than other unsecured creditors, such as vendors -- the high-profile plight of Enron's workers won them an unlikely victory on Valentine's Day.Acknowledging the more than 20,000 participants in Enron's employee benefits plan, a trustee with the Department of Justice appointed a separate committee to represent former workers. Federal law allows for such special committees, says Nancy Rapoport, dean of the University of Houston Law School and a bankruptcy expert. But she knows of only one other case when such a panel was approved. "I think it was done for perception reasons in order to reduce tensions," says Rapoport, noting that Enron paid more than $50 million in "retention" bonuses on the eve of its Chapter 11 filing. "I think it was a wise decision, but it has a price: [An employee committee] increases expenses, which inevitably will come out of whatever assets are left for the unsecured creditors."

When the committee representing the "employee class" is finally seated, the Severed Enron Employees Coalition hopes to have at least one member, if not several, appointed to it. The coalition's goal -- to secure $150 million in additional severance allegedly owed to laid-off workers -- is chump change compared to the hundreds of billions in secured claims staked by the "investor class" of banks and institutional shareholders. But it won't come easy. For one thing, both the secured creditors and Stephen Cooper, who was hired by the Enron board to restructure the company, have opposed additional severance beyond the $5,600 per employee that's already been paid out. Meanwhile, Cooper says he'll need another $50 million to keep his current workforce from fleeing to other companies.

"If Cooper can figure out a way not to pay employees, that just means more for the company if it survives," says Randy McClanahan, an attorney from one of four firms hired on a contingency basis by the severed-employees coalition. "And the investor class is against the employees, because that would mean more for them if Enron is liquidated. It is not in either of their interests for the employees to succeed."

McClanahan plans to counter the opposition by expanding the coalition's lawsuit to a claim for damages under the federal RICO Act. McClanahan will have to first convince the bankruptcy court that Enron was a criminal enterprise, and that the investor class conspired with the company's management to deceive shareholders and employees.

That strategy may have received a boost with the recent indictment of Arthur Andersen, as well as revelations that Fastow allegedly pressured banks and pension funds to invest in the off-balance-sheet partnerships in exchange for other Enron business. Watkins and chief operating officer Jeff McMahon told V&E attorneys and the Powers committee that favored lenders were known within the company as "Friends of Enron."

"That was actually a pretty widely used term -- FOE," confirms a former vice president with Enron Global Markets, who pronounced it "pho," like the Vietnamese noodle soup. "And for a while it worked. For a while everyone was happy."

Before Enron collapsed, its transformation from a stuck-in-the-mud pipeline company to New Economy "market-maker" was much celebrated, as was its principal architect, Jeff Skilling. Even today, many employees, while no longer worshiping at Skilling's altar, still marvel at his extraordinary intellect.

Lay particularly admired Skilling. In January, some weeks before he declined to testify before Congress, Lay was interviewed by attorneys representing the Powers committee. According to the notes of that session, Lay trusted Skilling, never felt manipulated by him and considered him a man of integrity and good judgment. He pointed out that Skilling had graduated from Harvard.

Skilling joined Enron in 1990 to run its embryonic natural gas trading business, Enfolio GasBank. The GasBank guaranteed its customers delivery of a certain amount of natural gas, at a certain time, for a predetermined price. At the end of each quarter, each contract was "marked to market" -- that is, its value was recorded depending on the price of gas that day. Enron then booked each contract as earnings or loss.

In 1993, Enron partnered up with the California Public Employees Retirement System, or CALPERS, to invest in independent producers of natural gas, crude oil and electricity. When CALPERS cashed out in 1997, Fastow engineered the infamous Chewco partnership. Chewco's financial statement should have been consolidated on Enron's balance sheet, but Skilling and Fastow apparently convinced the board that the partnership was an independent company, like CALPERS.

The "error" was discovered in November, and when the arithmetic was complete, Chewco accounted for a large part of the $1.01 billion write-down in asset value that preceded Enron's bankruptcy. The details of the Chewco transaction are extraordinarily complex. Less complicated is why Enron did the deal in the first place: It couldn't find a partner to invest in its assets. Michael L. Miller remembers when, a few years back, Enron tried to package its South American and Caribbean energy assets and sell them as a way of generating capital. For no apparent reason, the marketing effort was called Project California; one package was dubbed SoCal, the other NoCal.

"The SoCal package went out to ten to 12 potential buyers," Miller recalls. "Meetings were held, but they couldn't get anyone to submit even a preliminary bid. My boss pulled the NoCal book before it even went out to market. That was proof in the pudding that there wasn't a huge level of demand out there for the assets we had."

Janice Holloway, who used to work for what was once known as Enron International, remembers that the group's assets were "always on the block. But from what I could tell, they never sold more than a few." Holloway also recalls the prescient comments made by a co-worker as he left the company a few years ago. "He said to me, 'I don't know how they can keep this business going. I don't know how they are booking profits.' "

Holloway, who asserts she had a relatively low-level position working with the group's attorneys, says she responded by going downstairs to get a cup of coffee. "Yeah, I did wonder a little bit about it at the time," she says now. "But it wasn't something that people were talking about, like around the water cooler or anything. I wasn't a manager or a director. I didn't see any need to question. I really wasn't privy enough."

Enron began employing off-balance-sheet partnerships, which are widely used by U.S. corporations, in the early 1990s to hedge its investments in emerging markets. Often they proved to be good business decisions. Miller recalls that in August 2000, Enron Wholesale Services did a deal with one of several partnerships Enron named after a garbage-eating creature from Jurassic Park called a raptor. The year before, Enron had put $5 million in Active Power, an alternative energy company in Austin. The day the company went public, Enron's investment was worth $60 million. Miller's group hedged the gain by transferring the shares to Raptor during the 180-day "lockdown period," when they can't be sold on the market.

"It was a good deal," Miller recalls. "We were able to sell the shares and make a cash profit of $25 million on a $5 million investment."

That explains why Miller, who was instrumental in organizing the Severed Enron Employees Coalition and eventually wrote the group's charter, says the depiction of the horrendous Raptor losses in the Powers committee report "surprised me a little."

As detailed by the committee report, the Raptor partnerships were spun off from Enron's dealings with perhaps the best-known of its off-balance-sheet schemes, LJM -- so named for the initials of Fastow's wife and two children. Raptors I through IV had the greatest impact on Enron's financial statements, the committee report said, allowing the company to conceal $1 billion in losses on poorly performing assets it couldn't dump. The Raptors' fatal flaw was that they were capitalized not with outside equity but with Enron stock.

For example, LJM1 and its related Raptors received Enron stock to hedge investments in an Internet service provider, Rhythms NetConnections, and the expansion of a fiber-optic cable network. As long as the tech companies did well, the phony hedge was harmless. As long as Enron's share price held its own, the hedge served a useful purpose. While the details are infinitely more complex, the upshot is that both Enron's tech investments and its share price tanked. The company's management complicated matters by restructuring the deals in early 2001 without seeking approval from the board of directors. Nonetheless, the tech companies continued to decline in value, as did Enron's stock.

Meanwhile, after folding Enron International in 1998, Skilling effectively shut down Enron Global Markets group last summer, telling employees that the company wanted to dump its traditional asset base in favor of its trading operations. A former executive with the Global Markets group says that, as far as he could tell, Enron Global Markets was making money for the company, booking almost $80 million in earnings in 2000.

Still, he remembers one incident that makes him wonder how much of that profit was real. Just before Christmas that year, his boss called and said he "needed" another $20 million in the fourth quarter. Because the group marked the value of its assets to market, the executive went back and examined the group's holdings for a plant or a small energy concern that might have been undervalued. When he reported the bad news, his boss told him to look again.

"We had already marked everything that we could based on our accounting policies, which basically stated that you couldn't mark it up to a higher level unless a third party was willing to come in and pay that much," he says. "We did have two companies that were in the early stages of another financing round, and they had term sheets that suggested a higher price could be had at some point. We had no deals yet, but I said, 'I suppose if we took a very aggressive stance, we could say that based on these term sheets, [the financing] is going to happen.' I effectively took $20 million of accounting profits out of 2001 and brought it back into 2000.

"That was the kind of thing that was happening all the time," he continues. "The attitude was: 'The most realistic assessment of the future was whatever made my bonus bigger at year-end. I'm not going to be here in five years anyway when it all comes crashing down, so who cares?' "

The former executive says that however misleading the transaction appeared, it was approved by Arthur Andersen and Enron's chief accounting officer, Richard Causey. Rick Buy, head of Enron's Risk Assessment Group, which signs off on the final valuation of assets for marked-to-market accounting purposes, found nothing objectionable about it either, he recalls.

"It was effectively being forced on us that it was top down, that the accountants were telling us, 'This is the way we want to account for this deal, this is what we're going to do here,' " he says. "It all seemed very strange in certain cases. But, my God, we had all these controls in place and everyone has signed off on it, it must be okay."

It wasn't okay, though, and neither were many similar transactions between Enron and its off-balance-sheet partnerships. According to the Powers committee, while Enron's board of directors relied on Causey and Buy to protect the company's interests, neither "had the necessary time, or spent the necessary time" to scrutinize the transactions closely.

Then again, Buy in particular had a mandate to ignore reality when necessary. Consider this clause from Enron's risk assessment manual: "Reported earnings follow the rules and principles of accounting. The results do not always create measures consistent with underlying economics. However, corporate management's performance is generally measured by accounting income, not underlying economics. Risk management strategies are therefore directed at accounting rather than economic performance."In his interview with the Powers committee, Lay said he began to prepare Skilling for the CEO position some months before the transfer of power in February 2001. Lay said Skilling "appropriately slowed the flow of information" to his former boss, who remained chairman of the Enron board of directors. Meanwhile, Lay told interviewers, he began focusing on other areas of Enron's business, problems in California in particular.For Lay and Enron, California was like the entryway to the Garden of Eden, the first substantially deregulated power market in the country. And thanks in large part to Lay's political stroke and largesse -- Enron's officers, directors and employees gave millions in campaign contributions individually and through a political action committee -- it certainly wouldn't be the last. Pennsylvania, New Jersey and Delaware had banded together to create a deregulated market on the East Coast, and two dozen other states, including Texas, were moving toward giving consumers a choice between private energy companies and public utilities.

Enron Online made a mint selling megawatt-hours on the spot market in California, where rates at one point were several hundred times the norm and a series of rolling blackouts darkened areas of the state. Earnings for Enron Wholesale Services increased from $12 billion in the first quarter of 2000 to $48.4 billion during the same three-month period a year later. According to several lawsuits filed last year, however, those profits were the result of price manipulation by Enron and other energy companies, including Reliant and Dynegy.

Enron could never hope to sustain those profits in any event, especially after the Federal Energy Regulatory Commission imposed price caps in California. There was also increased competition from other energy companies whose trading operations were starting to cut into Enron Online's market share. Where Enron had really hoped to distinguish itself in California and elsewhere was in retail power-management contracts.

Enron Energy Services was supposed to be Enron's most promising business unit, the crown jewel of the corporation in the eyes of some. In reality, it was a bust right from the start. The idea was that because of deregulation, the CEOs and CFOs of businesses that consume a lot of energy, such as manufacturing plants, shopping malls and apartment complexes, would look for the best deal on electricity and natural gas. But could they find it? That's where Enron came in. EES would handle everything -- purchasing, delivery, metering and billing -- and guarantee significant savings to boot. This was an extremely appealing offer, says Margaret Ceconi, who negotiated such deals at EES.

Compared to off-balance-sheet financing, Ceconi's experiences at Enron -- which she has shared with the SEC and expects to someday share with the Department of Justice and Congress -- have the dual virtues of simplicity and clarity of intent. And they speak volumes about the company Ken Lay so awkwardly called "one of the best places to work in the world."

EES had about 2,000 employees, a couple hundred of whom, like Ceconi, worked directly on generating clients, negotiating contracts and ensuring the service was delivered. The pitch was that, based on Enron's expert assessment of supply and price trends, a company could expect its energy costs to go up over the long run.

Enron would assume that risk by buying power for whatever the market charged, while guaranteeing delivery to its customers at a predetermined price for ten years. Sound good? There's more: Enron would reduce the price it charged by, say, 50 percent for the first few years and adjust the annual bill accordingly in the later years of the contract.

It's called "tilting the curve," and Ceconi was able to illustrate the peculiar logic behind it with a few strokes of a ballpoint pen. Seated at a conference table in her attorney's office, Ceconi sketched a standard two-line graph, added a few numbers, then drew a line, left to right, that stays constant for three years, then suddenly bellies down before rising again in about year seven. The finished drawing was an approximation of Enron's internal pricing curve, which purportedly represented what Enron calculated the price of energy would be over the next ten years.

"This was something you would die for," Ceconi said when she finished. "Other companies couldn't figure out how Enron made money at this, because when they tried to do it, they couldn't figure out how to make money at it."

Truth was, Enron couldn't figure it out either. But it hid that fact by using a pricing curve that, contrary to what EES was telling CEOs around the country, projected that prices would drop dramatically. This allowed EES to show, on paper anyway, that its long-term power contracts were going to be enormously profitable. Moreover, using marked-to-market accounting, EES's accountants booked the projected ten-year value of the contract as earnings the day the deal was closed. The problem was that it hardly reflected the reality of EES's financial situation.

By tilting the curve to give customers an early discount on their energy costs, EES wasn't taking in enough to cover what the local utility companies were charging for gas and electricity. Meanwhile, EES was spending much more than it projected setting up the infrastructure for the retail contracts. For example, it was estimated that changing out an electric meter for one that Enron could track in Houston, whether the building was in Duluth or Chicago, would cost $1,000. It turned out the standard rate was $10,000 to $15,000. Some of Enron's biggest retail clients, such as Simon Properties and JCPenney, to cite just two, required hundreds of new meters for buildings all over the country.

Ceconi, an accountant and former banker, says it took her four months to figure out that EES was booking profits that it could substantiate only theoretically. When she pointed that out to her bosses and co-workers, they told her she simply didn't understand the business. "They said, 'No, this is energy accounting,' " Ceconi recalls. "But they knew these could not possibly be considered real earnings. Did they think they were so smart they could predict the future's curve? To a certain degree, yes, but I heard time and time again, 'Don't worry about it. That's somebody else's problem down the road.' "

Eventually, it became Dave Delainey's problem. Delainey was named EES's chief executive a year ago. The first thing he did was put a stop to the inflated marked-to-market valuations of EES's contracts. The new valuations, Ceconi says, showed that EES was losing millions of dollars meeting the energy needs of more than 31,000 buildings across the country. By May, EES had quit looking for new business. It had also changed the employee compensation formula, which originally paid a commission based on the full projected value of a contract. Ceconi saw her single commission -- deals took more than a year to close -- reduced from $300,000 to $25,000.

Ceconi acknowledges that she was lured away from her corporate job to become a salesperson by the promise of giant paydays. Even though the original commission formula was no longer workable, and rightly so, Ceconi apparently was one of the few who understood that. Most of the staff was furious, especially the seven who had made more than $1 million in 2000.

"Everybody knew this was going on, but nobody knew it was wrong because it was 'innovative and creative,' " Ceconi says. "Because most of the people had spent their whole careers at Enron and they had no basis for comparison. Those of us from the outside said, 'This isn't the way you do things.' They didn't know this was something you couldn't do."

Then again, taking liberties with the balance sheet had become the Enron way. In addition to the other changes at EES, Enron folded the unit's risk assessment desk, which certified the contract values, into Enron Wholesale Services, where they were raking in the profits on the California spot market. That allowed Enron to shift about $500 million in losses off EES's June 2001 financial statement onto the books of a more profitable unit, where they would be absorbed undetected.

Around mid-morning on August 4, 2001, Jeff Skilling paid a visit to an EES "floor meeting." About 100 people attended, Ceconi recalls, and there was no shortage of questions about the unit's future.

"One guy says, 'Hey, Jeff,' " Ceconi recalls. " 'You said the stock price is being penalized by analysts and that we should keep on buying, yet you're selling shares every week.' And Skilling says, 'Well, all executives have to register their stock sales, and I have a plan, and I don't know when it's going to sell, and I'm building a house and my accountant says I need to do some estate planning, and 80 percent of my worth is in Enron stock. But we still think it's a good buy and you guys should be buying.' "

Apparently, Delainey's predecessor as EES's chief, Lou Pai, was doing some estate planning as well. Pai began selling his Enron shares in January 1999 and didn't stop until June 2001. But by the time anyone knew EES was a failure, Pai had made $353 million -- three times the next-highest cash-out: $101.3 million by Ken Lay.

Ceconi says that everyone at the floor meeting knew the earnings reported on EES's June financial statement were bogus. Yet she remembers that Skilling touted EES as Enron's "next star," predicting that the unit would be generating $500 million in income in a year or two.

"I'm thinking, 'What drug is he on?' " Ceconi recalls. "I said, 'Hey, Jeff, what's your strategy for getting us there? I mean, do you know something we don't know? Because we have no product to sell.' He said, 'Oh, you guys are the creative ones. You'll come up with it.' He was totally blowing smoke. We all got laid off later that day."Less than two weeks after gutting Enron Energy Services, Skilling resigned as CEO, after just six months on the job. A day after Lay announced that Skilling wanted to spend more time with his family, Skilling himself acknowledged in an interview that he had taken personally the steep decline in Enron's share price under his watch.At the request of the board of directors, Lay once again took charge of the company. He told the Powers committee in January that at a management retreat in The Woodlands about a month after his return, he solicited comments about Enron's problems. That led to a one-hour discussion of off-balance-sheet transactions, which most of the two dozen attendees admitted they had used on occasion. According to notes of his interview, Lay said the consensus was that "so long as the vehicles were valid, they made a lot of sense."

Lay acknowledged that he had been consulted on the formation of most of the partnerships run by Fastow, but claimed not to have known they were being used to conceal huge debts and losses until October, when the company reported a quarterly loss of more than $500 million. By then, Lay had been working hard to rally the company's employees, starting with the "Lay It On The Line" survey. There is a somewhat surprising ambivalence among former Enron employees interviewed for this story about Lay's culpability in the company's collapse, although everyone believes he failed to respond quickly enough to Sherron Watkins's detailed warning of the accounting high jinks. For that reason -- and because he was, after all, CEO and chairman of the board -- nearly everyone agrees he bears ultimate responsibility.

Diana Peters is convinced Lay was "a patsy" who was "duped" by Skilling and Fastow. She believes Lay was sincere when he asked employees to "Lay It On The Line," and she senses nothing sinister in his exhortation in a September 26 online chat to "[t]alk up the stock and talk positively about Enron to your family and friends."

"I think he really thought he could make things better, smooth things out and move it forward," Peters says. "I don't think he had any intention of deliberately screwing anybody, excuse my French."

John Allario, creator and Webmaster of Laydoff.com, one of a handful of electronic gathering places for disenfranchised workers and an outlet for their frustrations, was initially encouraged by Lay's efforts at leadership, but eventually changed his mind. "At the time, I thought it was a very proactive thing for Lay to be doing," he says. "He had just taken over, and this was one of his efforts to get his hands around what the company was thinking. In hindsight, it seems like a well-planned PR campaign to give me that exact feeling of comfort, that Ken was at the helm and looking out for me."

Lay acknowledged in his Powers committee interview that cashing in more than $100 million in stock options might have suggested to Wall Street that he was ripping the parachute from the back of Enron shareholders and bailing out. Lay's attorney, Earl J. Silbert, has defended the stock sales, saying Lay needed capital to repay millions of dollars in loans he had received from the company. But according to notes from his interview, Lay never mentioned the loans to the Powers committee. Instead, Lay explained that he "wanted to liquidate some of his stock to diversify because he had approximately 75 percent of his assets in Enron stock plans."

Ceconi doubts that explanation. She figures that, based on what she saw, Enron had been technically bankrupt for almost two years, and the top brass knew it. Meanwhile, she says, Lay "was encouraging people to invest in the company and selling his own stock. He was like Jeff Skilling. No, he didn't have anything to do with when the stock would be sold. But yes, he did choose to turn the switch on in the first place to start selling shares every week."

It's safe to say that, in contrast to the mixed emotions about Lay, the contempt for Skilling and Fastow is shared by all former employees. They orchestrated a solution to the company's problems that wasn't a solution at all, says Michael L. Miller of the Severed Enron Employees Coalition. Miller is angry that Skilling only increased the pressure on a struggling company by trying to justify a higher share price through "deceit." The only honest solution, he says, would have been to admit Enron was overvalued and adjust the balance sheet accordingly.

Still, Miller isn't willing to tar everyone involved in the deception with the same brush. While he believes people such as treasurer Richard Causey and risk manager Rick Buy ignored their duties to shareholders, they may have weighed their options and decided it would all work out in the end.

"These guys became incredibly wealthy riding that train with Skilling," Miller says. "At the same time, I believe they viewed all this off-balance-sheet theatrics as a stopgap until we could get our [assets] sold and generate the five or six billion in cash that Skilling had been promising Wall Street for a couple years. I don't think they viewed them as a permanent part of the organization's structure, but as something that was necessary to get things off the balance sheet for this year-end, and by next year-end, we'll unwind them. And next year never came."

However it happened and whoever's to blame, the coalition's members seem eager to move on to the more pressing issue of securing $150 million in additional severance. According to the class action suit, the coalition's claim is based on Enron's failure to give 60 days' notice before termination, per company policy. Many employees also want bonuses owed to them for their work last year; Miller says his would be "in the six figures." As for their lost retirement savings, few coalition members hold out any hope that even a fraction of that will be recovered.

"At its peak, people probably had a lot of money in their 401(k)s, but that was based on a business model that was fraudulent," Miller reasons. "How much money would people be allowed to claim they lost?"

There is some worry among coalition members that their case will be weakened somehow as former employees move on, either to focus on new jobs or to avoid being consumed by anger and disappointment. After a lot of early interest, the employee class represented by the coalition has leveled off at about 600 people.

Still, interest could pick up if Houston's energy economy doesn't. No one knows how many of the 4,500 employees laid off are back to work somewhere else; about half the coalition members interviewed have found new jobs. A pattern of discrimination has emerged in the refusal of some firms to even interview former Enron employees, says Michael J. Miller, who put in 20 years working for the company and its predecessor.

"If you were an employer and you had a choice of equally qualified candidates, and one was from Enron and one was from Duke, which would you choose?" Miller asks.

That's a stunning turn of fate for Enron employees, who were once considered the best in their field, not just in Houston, but in energy centers around the world. Even now, many employees think it's only a matter of time before people are downloading entire libraries of movies onto their hard drives and the demand for broadband will catch up to the supply. On the other hand, the company credited with opening up the country's energy markets to private companies has done the most, through its abuse of the privilege, to damage the cause. Some states are rethinking their new laws, while others have postponed enacting theirs until the federal government concludes an investigation into alleged price manipulation in California.

In the end, the lack of an honorable legacy may prove quite motivating for former employees.

"We're all very interested in seeing that justice is done," says Michael L. Miller. "And justice means not only that what is due the people who worked at Enron is returned to them, but also that there is some accountability here. Who is to blame? And that those people pay the consequences."

# APPENDIX AK

## *Trash for Cash From S&Ls to Enron: Bill Black Offers a Primer on CEO Fraud*

TEXAS OBSERVER

May 24, 2002

By Jake Bernstein

Bill Black is well positioned to appreciate the criminality of Enron and the wave of financial fraud now soaking American business. As litigation director for the Federal Home Loan Bank Board, Black took the lead in flushing out the crooks who commandeered the Savings & Loan industry in the early 1980s. All told, taxpayers paid about $150 billion to clean up the S&L scandal. Black blames $125 billion of the total on massive fraud, mostly perpetrated by real estate developers who used S&Ls as personal piggy banks, and then manipulated accounting to hide their losses.

Black not only exposed corrupt S&Ls, but helped push through legislation to prevent future fraud. In doing so, he personally tangled with some of the most powerful men in America. His pursuit of Texas high flyers like Don Dixon, who ran Vernon Savings & Loan, pitted him against then-U.S. House Speaker Jim Wright. Vernon, which regulators nicknamed "Vermin," had a 96 percent default rate. Despite Wright's forceful resistance, Black and the Bank Board filed a civil racketeering suit against Dixon in April 1987 for looting $540 million from Vernon. A federal court in Dallas convicted Dixon on 23 counts of bank fraud, sentenced him to five years in prison and ordered him to repay $600,000.

In Texas between 1982 and 1986 paper assets for S&Ls grew by 299 percent, as compared to 55 percent nationwide. Black repeatedly went to the media to publicly call attention both to the fraud and the political machinations protecting it. A special counsel to the House Ethics Committee investigated and found that Wright had violated House rules four times in relation to the S&Ls, including efforts to fire Bill Black. In the end, the House Ethics Committee sanctioned Wright for other minor matters and he resigned from Congress on May 31, 1989.

S&L kingpin Charles Keating proved Black's strongest foe. Keating controlled Lincoln Savings & Loan through his company, the American Continental Corporation. His political patronage bought him an appointee, Lee Henkle, to the three-person Bank Board, and almost paid for another pick. Black exposed Henkle's machinations on behalf of Keating, and forced his resignation. In an effort to stop Black, Keating sued the regulator for $400 million. He also mustered five U.S. senators to meet with Black and his boss to pressure the Bank Board. Black took impeccable notes at the fateful meeting that forever branded the senators as "the Keating Five," and earned them a slap on the wrist from their Senate colleagues. By then the collapse of Lincoln had cost taxpayers over $2.5 billion and Keating was on his way to jail.

The Texas corporate marauders Black pursued created deals like "trash for cash," in which an S&L overlends, and in exchange for the extra money, the borrower buys an inflated property carried by the S&L. That way, the S&L posts a gain and cleans the books. Another variant on this theme, Black explains, was called "you trade me your dead horse for my dead cow," in which two S&Ls swap overpriced bad loans and then both register "new" profits.

After leaving the government in 1994, Black added a Ph.D in criminology to a resume that already featured a stint as a corporate lawyer and training in economics. The still-idealistic Black has developed a theory he calls "control fraud," to explain how a CEO bent on fraud, in the right conditions, can do massive damage. Like a pyramid scheme, these accounting scams and others worked as long as the S&L traded in assets that had an uncertain market value, in this case, future construction projects. It also needed to show constant growth to hide the vanishing money. As Black relates, all of the S&Ls that purported to be the most profitable proved to be catastrophic failures in the end.

He sees multiple parallels between the S&L debacle and Enron, which according to recent reports seems to have overstated its assets by $24 billion. The Houston-based energy trader was not the only major fraudster operating in the American economy. As K-Mart struggles to survive exposure of its accounting trickery and major institutions like JPMorgan Chase teeter under the weight of dubious lending and derivative profits, Black's critique grows ever more illuminating. The Observer recently caught up with Black at the LBJ School of Public Affairs at The University of Texas where he is a professor.

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***Texas Observer:*** *What are the ideal conditions for control fraud?*

**Bill Black:** You want to look for situations where one individual has total control over a weak firm. You want to look for any industry with mass insolvency–that's an environment where control frauds are likely to move. Next look at whether [the business] can be acquired cheaply. Then, is there a way to grow rapidly? So what you are going to look for are areas that create phony accounting. And that is where this would really come into Enron.

What Enron and the various high-tech folks have done is they have found things that have no clear market value, but that can create phony accounting income and hide real losses. So this is all those high-tech swaps that you have been reading about–not just in Enron–where people do stuff like exchange bandwidths and then they book gains. That's completely phony income. And it is very difficult to know when the market becomes dominated by this phoniness, what the real market value of that bandwidth is. In fact it is presumably a tiny portion of what they are declaring.

***TO:*** *What are some of the parallels with Enron and the S&Ls?*

**BB:** One of the things that [Kenneth] Lay did was go to his chief regulator, the chairman of the Federal Energy Regulatory Commission (FERC) that regulates pipe lines, and said, "if you want to be reappointed, I could be helpful to you. If you modify your position." The second thing that Lay did was give a list of proposed regulators to Bush. The people currently serving are from that list.

Arthur Andersen is a direct parallel. In fact Arthur Andersen, in the case of Lincoln [Savings and Loan] did worse things than it did in Enron. What AA is getting in tremendous trouble for [now] is a cover-up after the fact, not from shareholders, but from trying to escape liability itself.

In the Lincoln case, Keating's entire purchase of the S&L was funded by Michael Milken of Drexel Burnham. And Michael did what he commonly did, which was to overfund dramatically. Keating needed $51 million to buy Lincoln Savings. Instead Milken issued well over $100 million in Keating's parent company bonds. Now this is a really, really heavily leveraged company. Which is to say that Milken had Keating by the short hairs.

So Lincoln is soon buying more than a billion dollars in junk bonds, overwhelmingly from Milken. But now they have a problem, because a junk bond, as Milken used to be fond of emphasizing, is really a corporate loan. So we have these little things called rules which say that if you are going to make a loan to somebody, you have to underwrite it first. You have to make sure you are going to get paid back. But Keating has zero control or input on this billion-dollar junk bond portfolio. He finds out at the end of the day in a telex what he now owns. Milken just does all the trades. You can see how useful this is to Milken in manipulating junk bond prices, creating his record low default rates that he always bragged about. So they have done no underwriting, and they know that our examiners, the first thing we look at is underwriting. So they go, "oh shit, we have a problem."

Again like Enron, they hire Arthur Andersen in their consulting role, then simultaneously as their auditor. They have a team of folks in a big conference room who spend weeks creating phony documents. It's more clever than backdating. Undated. This is in some cases two years after they bought the junk bonds. When they do the undated stuff, they make sure that they only have information in there up to the date the investment was actually made. So the intent is obviously to make it look like they were contemporaneous underwriting documents, but without ever dating them, and creating an express falsehood. They did that to at least hundreds of files.

Then you have the special partnerships. Keating used the special partnerships as a way to get money to his family from the S&L. Keating even had an [Andrew] Fastow like character.

***TO:*** *How hard is it to ferret out these frauds?*

**BB:** One of the things that you have to remember is that there are not that many people looking for these things. We were in a regulatory agency that was actually supposed to look at an industry. And eventually we discovered many of these things, albeit far too late. But FERC doesn't see it as its mission to be going around looking for these kinds of frauds in the energy industry. It doesn't have much jurisdiction. So you are really talking about the SEC, which is completely overwhelmed.

The amount of resources you need to take on a sophisticated fraud is much bigger than most believe. You are talking about hundreds of FBI agents to even begin to look at a place with two to three thousand partnerships. And most FBI agents can't do financial cases. It goes back to control fraud. You control the structure. So you make the structure whatever optimizes for control fraud. And one of the things that does it best is complexity.

***TO:*** *Why else is it so important to be in control?*

**BB:** The difference in being at the top of the food chain as opposed to the bottom is enormous. Part of it is how much damage they do. Keating caused three billion dollars in losses. You can take all the burglars, probably in America, and not come up to three billion dollars in losses.

Part of it is how they do it. If I am the CEO, all the internal controls are designed by me. All of them report to me. I choose the external controls such as the auditor. I can fire the outside auditor. People are not willing to look at me as a thief.

These frauds create record profit and an enormous turnaround. What are the normal things you do for a CEO at that point? You give them a raise. You give them a bonus. You give them stock dividends, and the stock appreciates like all crazy because of what's happening to the income statement and the balance sheet. These guys get private air forces. The perks can run into the tens of millions.

***TO:*** *The bonuses and stock performance allow for a certain deniability?*

**BB:** It's perfect, if you are able to have the discipline to just take your money in those mechanisms. Those are all normal corporate systems. None of them are suspicious. And you can now use the professional in another way. You can say, "I am not the expert in the value of real estate. That is why we have appraisers. Here is the wonderfully talented person who said it was worth this. Here are the loan officers who looked at the appraisal. They have X years of experience, they said it was okay. Here is God's Auditing Representative on Earth, he said it was kosher. Here are sixteen law firms that signed off on my financials after discussions with these folks. They all said it was good." There is no way to prosecute somebody if they limit it to that. The only way we could get them was if they got too greedy.

***TO:*** *How do you get the "professionals"–accountants, appraisers, lawyers–to play along?*

**BB:** The outside professional vouches for the value. Do you pick a crummy accountant or a really good accountant if you are engaged in control fraud? No.You pick the best firm in the world. That is why they always had a big eight [now five] accounting firm, because it is far more prestigious.

I never tell the accountant to inflate the value. I don't go and hire an accountant by saying, "Hello, I want to commit a control fraud." What you do is say, "Hello, I want someone that is really, really smart. I want your smartest guy. I want someone who is innovative, someone who hustles for my business." We call it accountant shopping. You exploit market pressures. That's how you make it in a big firm. Can you pull in the big clients? These S&Ls were willing to be very good clients and pay you a lot of money.

The way you get an appraisal is you don't tell him or her how big the appraisal has to come in. If it is a new appraiser, you say, "give me a preliminary appraisal orally." And if it comes in at the right number, you say, "great, go do the final." Remember: You get more for a commercial appraisal. The percentage is bigger on bigger projects. Obviously, if they give you the wrong answer you say, "Thanks, don't bother to write it up. We will probably not go ahead with it." And then of course, you go to another appraiser. Pretty soon, as you've probably figured out, you get to the right appraiser.

Whoever was willing to be sleazy, you could send your business to them. You didn't need to suborn a whole industry. You just needed a few, and that proved never to be terribly difficult.

***TO:*** *These guys are not necessarily dumb. Don't they know what is going on?*

**BB:** Do they know what is going on? Some part of them knows. People are very good at denial. In the criminal business, our jargon is "neutralization techniques." Rationalization is just one of those examples. For example, the Keatings of the world don't simply do the, "Well it's okay, everybody does it," type rationalization. They have a much better variant. It's "We are geniuses. We are transcendent individuals and we are dealing with stupid bureaucrats."

Then you tell each of your people–and you've hired very callow folks with very little experience–they are geniuses. You fire anybody who asks questions. That was the central rule. Pretty soon you have a group of yes-men who think they are really bright. And the next step is to say, "Not only are the government regulators stupid, but they are out to get us." It's Us against Them.

***TO:** Was there more willingness on the part of the government to go after the S&Ls than to prosecute today's fraudsters?*

**BB:** We ended up getting a thousand convictions, arguably one of the most successful white collar crime efforts in history. But then priorities shifted, and it was very hard to get support to do anything more in that area. Now you have an SEC commissioner who is being dragged kicking and screaming into a more assertive enforcement mode, but who still has no meaningful resources to do it, even if he really believed in it, which it is not clear he does. You don't see much on the investigative as opposed to the enforcement side being done to try to find how many other

Enrons are there. We started looking very intensively at how many other Vermin Savings and Loans there were. I don't think that's happening now.

***TO:*** *Where is the line between creative accounting and fraud?*

BB: What we seem unwilling in our business culture to admit is that it became fraud a long time ago in a broad range of businesses. Let me give you an example. I live near Silicon valley. It is very common in the high-tech companies to sell merchandise on December 31 and have it returned two days later. Typically it's software. You sell it to someone who understands the game, and they have a complete right to return it. You book the gain in the current fiscal year, do your financial reports with that gain, and it makes your statement look really good. And that is known as "window dressing." Window dressing is fairly pervasive. Managing earnings is incredibly pervasive. They teach it in business school. You want to smooth earnings, so you manage them. Let's book this gain, but not book that gain until the next month. Then it will be more steady and investors will like that and such. All of those things are actually fraudulent practices. You are not following appropriate rules. You are doing so to mislead the investor. But we don't treat it as if it is illegal.

The rules actually say it is securities fraud to deliberately not follow generally accepted accounting principles (GAAP). If they deliberately don't follow GAAP, under SEC rules, that's fraud.

But nobody believes the SEC is going to bring that action unless you have also done other bad things, in which case they may add in a charge. And so those practices become not universal, but pervasive. And in my criminology ethics hat, that is a very bad thing, because that's an erosion. And if we can justify that, then it's not that much greater a step to lay on this phony partnership and this phony deal because we really think there is value down the line in the investment. You can see this whole rationalization practice. People do that, and it gets easier, I think, because the SEC allows it.

I don't know if you ever heard of Stanley Sporkin. Sporkin was the SEC enforcement head back maybe 30 years ago. He was the guy who was just hell on wheels about evil conduct. When I was a lawyer at my big law firm, Sporkin was really useful with clients because you could say, "It's wrong to do it. If you do it, you know what Stanley Sporkin is like. You may end up on the front page of the Washington Post." We haven't had a Stanley Sporkin for a long time.

***TO:*** *Then how prevalent do you think fraud truly is in American business?*

**BB**: I don't think control fraud is frequent in the Fortune 500. But I think we now know that it was not remotely an unheard of thing. Some of the biggest companies in America were at root financial frauds. Enron's strategic plan was to engage in fraud, which is basically what the Powers' report shows. As soon as you make it clear that it is fine to scam the numbers–not only fine, but the central business strategy–what kind of message are you sending? We now have several other major firms and charities where that has also proven true. And we have seen all of those folks get clean opinions from big five audit firms, which is really scary.

More generally, people are starting to figure out that having something like the high-tech bubble is really bad for the American economy. When you allow values to get way out of whack with the fundamentals, it's not just money moving around, you can screw up your economy big time. I have some hope that the collapse of our tech bubble, which was one of the largest bubbles in the history of the world, has also scared some folks into thinking that maybe this isn't such a clever way of doing it. Unfortunately, the attitude was "The rules are silly" and "Aren't we so clever." And that combination produces a lot of the worst disasters.

***TO:** Do you think the SEC Chairman Harvey Pitt and the major accounting firms have a real commitment to reform?*

**BB:** No. And that's kind of appalling. They think of these things as hostile, but AA and the others have lost so much more money than they gained. If they simply ran a good business and said, "It would be cheaper to do this right, and to make sure that our audit partners out in the field do it right," they'd make money, and they would have a vastly better reputation.

I have somewhat more hope that there may actually be restrictions put in place, for example, that auditing firms not be allowed to be both the outside auditor and the consultant for the same company. That would be helpful, but I don't think it will produce much. Then it becomes even more intense: You absolutely have to get the client. So yes, it will reduce one sort of conflict of interest and that's good, but it may have a negative effect that comes close to counter-balancing it.

***TO:** How do the scandals of today measure up to the S&L scandal?*

BB: You want my pessimistic way of approaching it? If Keating and Milken didn't have the small problem of both having confessed to felonies, they would have made Enron look trivial. The key problem that Keating and Milken had was that they found it very difficult to raise equity. Think of what Keating could have done during the greatest stock boom in the history of the world, where you could have no product at all, and it could be worth billions the next day in an IPO. If Milken had still been at the helm during this incredible boom, think what he would have done in leveraged buyouts. It's staggering. Lay actually got started in part through Milken back in the old days. If the master had been available during this time period, we might be in recession now.

***TO:** Will Lay take the brunt of the blame for Enron?*

**BB:** [Jeffrey] Skilling is in deep trouble because he has witnesses who are clearly aiming at him. And you have this bizarre non-whistle-blower whistle-blower [Sherron Watkins]. The whistle blowing is when you tell the public, not your boss, and then act like he doesn't know anything about it. That's Godsend testimony from Lay's standpoint. But Skilling also has the wrong persona: unrepentant, and very nasty. The kind that folks love to hate. If you are Bush, and want to show you are doing something, who better than Skilling as a target?

***TO:*** *Is there a possibility that fraudulent accounting practices could catch up with more companies?*

**BB:** Oh yeah. The recession and the collapse of the high-tech bubble act like a stress test. There is no doubt that there are pretty broad-scale games in accounting, and there are a lot of products that didn't make a whole lot of sense or never came through. The only way typically to hide it is to grow a whole lot more–and with the current economy, the money isn't even remotely coming in the same way. It will catch up to them because when you lie, you eventually do end up getting caught once it collapses.

# APPENDIX AL

*Laid-off workers lash out at Lay*

The Houston Chronicle

Wednesday, June 19, 2002

3 STAR EDITION

Section BUSINESS, page 1

By Staff, Bill Murphy

Former Enron employees, including some who lost their retirement savings, are infuriated to learn that many of the company's then-executives received huge compensation packages in the year before its collapse last December.

"I'm livid, absolutely livid," said Sandra Stone, a former executive assistant who says she lost $ 150,000. "I have lost my entire friggin' retirement to these people. They have raped all of us."

Former Chairman Ken Lay received about $ 67 million in 2001, while former CEO Jeff Skilling got about $ 40 million, according to a bankruptcy court filing Enron released on Monday.

Former Enron Wholesale Services chairman Mark Frevert received $ 33.5 million, including $ 7.4 million that mostly went for living expenses and a relocation expense when he returned from London to the United States.

"Every time you think you've heard it all about injustice at Enron, there's another bombshell," said Damon Silvers, associate general counsel for the AFL-CIO, which helped win severance pay for former workers.

The compensation included salary, bonuses, incentive pay, stock options and loan advances.

But Lay spokeswoman Kelly Kimberly said the number is wrong. She said Lay's compensation fell far short of $ 67 million in part because stock options proved to be worth far less than the latest filing indicates.

"Mr. Lay's compensation was determined by outside consultants as an appropriate amount for his role as chairman and CEO of a Fortune 500 company," she said in a written statement. "A significant portion of his compensation was in stock, stock options and long-term incentives and was, therefore, never realized."

In January 2001, Kimberly said, 80 percent of Lay's net income was in stock, stock options, deferred income and 401(k) savings, and he has lost 80 percent of his net worth since then.

However, former employees remain furious at Lay.

"A lot of people worked hard to build up this company," said Debbie Perrotta, who was a senior administrative assistant. "And they left everybody out with nothing.

"I hope they throw them all in jail."

Perrotta said she is especially infuriated because former employees had to fight for months before a U.S. bankruptcy judge in New York agreed they should be paid up to $ 13,500 in severance.

"Mr. Lay remains deeply saddened by the impact the Enron collapse has had on its current and former employees and shareholders," Kimberly said. "He's a strong believer in God and believes everything will work out."

During a sometimes tearful television interview in January, Lay's wife Linda said the couple were facing personal bankruptcy. But Kimberly said the Lays are no longer facing bankruptcy.

**NOTES:** Additional coverage online www.houstonchronicle.com/enron Extra: Compensation amounts paid over 140 Enron executives last year.

## APPENDIX AM

*Viewpoints*

THE HOUSTON
CHRONICLE

Thursday, August 15, 2002

3 STAR EDITION

Section A, page 31

By Dean Nava, Frankie Brewer, Cindy Cicchetti, Edwin Bersin, David Allan, David Holmes, James Pyland, Sam Streeter, Jay Bute, Dixie Cason, William B. Braden

About Skilling's letter . . . / Both nimble and smart

Regarding the Aug. 14 Viewpoints letter from [Enron's former chief executive] Jeff Skilling, "Skilling: 'I committed no crime' ." If that's his story, so be it. But the average person's perspective is that he is too smart and too well-connected not to have known what was going on.

Also, stating that no one told him they "were committing a crime" shows that he cares more about nimbly skirting the laws instead of the ethics. If he just stays out of the limelight, he won't go to jail, though; he's too rich.

Dean Nava, Houston

About Skilling's letter . . . / Words between the lines

[Former Enron chief executive] Jeff Skilling says the Chronicle "made up or twisted facts." I wonder how the paper twisted the fact that Enron, once a thriving, profitable company, is now in shambles and hundreds of employees have been cheated out of their retirement futures. I thought it was interesting, too, what Skilling didn't say. He didn't claim any of his actions were honest, moral or ethical.

Frankie Brewer, Baytown

About Skilling's letter . . . / Ripping out our hearts

Jeff Skilling, is ripping my heart out with his comments, but he'll be hard-pressed to find anyone who believes he was that ignorant. I think he was shrewd.

I remember how, at one meeting, he rolled up his sleeves, jumped up on a table and extolled the virtues of Enron and encouraged us to keep working to make more money for the company. About a week later he was gone and the rest of us were left holding the dirty laundry.

Cindy Cicchetti, Houston

About Skilling's letter . . . / Maybe the butler did it

[Enron chairman] Ken Lay says he didn't know. Jeff Skilling says he left the company in great shape. Others have no recollection of anything having been done wrong. Do they think it might have been the janitors, at night, when no one else was there?

Edwin Bersin, Sugar Land

About Skilling's letter . . . / Laid off but still amazed

After being laid off from Enron on Dec. 3, 2001, I thought I was beyond being amazed at anything connected with the Enron "ethics circus." But that was until I read about the former employees - including Jeff Skilling's wife - who are trying to derail the final severance agreement for more than 4,000 laid-off workers because they want more money for themselves.

David Allan, Houston

Comparing Iraq to Vietnam / Buzzanco missed boat

In his Aug. 11 Outlook article, "America can still avoid another Vietnam in Iraq," Robert Buzzanco's intellectual dishonesty was reminiscent of the 1960s. Ignoring the facts, "outspoken" scholars of that day whipped themselves into a frenzy with slanted assessments about the authorities.

To be very clear, we already have "many American casualties" due to the "massive discontent in the Arab world." As a student editor of a campus newspaper during the Vietnam War, the Arabs were none too happy with us then, either.

Buzzanco and others of his ilk miss the boat entirely when they compare the indignity of "alleged" attacks against military targets to the event that serves as today's backdrop . We are not going to snuggle up to "peace in our times" and let a latter-day Adolf Hitler loose among us.

David Holmes, Boling

Comparing Iraq to Vietnam / Nuclear knife at throats

I was so glad to read the op-ed article that raised questions about the idea of attacking Iraq (Robert Buzzanco's Aug. 11 Outlook article). The Bush administration is trying to paint Saddam Hussein as an irrational and completely unpredictable madman, while, in fact, he is no worse than other world leaders who are so quick to rely on warfare to solve their problems.

Saddam may be brutal when it serves him, but this is in no way synonymous with instigating attacks with weapons of mass destruction. And he wants these weapons for the same reason every world leader has ever wanted them: for a temporary sense of security.

We should ask them all: How much security has been created by the worship of mutually assured destruction and the ensuing, unstoppable encroachment of nuclear arms?

How can we expect nations bullied by nuclear superpowers to stop grasping for possession of the very type of weapons being held at their throats?

James Pyland, Houston

Fog those mosquitoes

The Environmental Protection Agency has limited spraying for mosquitoes to only three times a week. This whirlwind of the West Nile virus threat is the result.

Sam Streeter, Tiki Island

SimHouston suspicions

Another angle on Veronica Bucio's incisive Aug. 12 Editorial Page Sounding Board column ("Delving depths of city computer deal") on the suspicious SimHouston public library software contract is that it is a disservice to those Houstonians most in need.

As for getting a job, knowing Microsoft Word is a valuable job skill; knowing SimHouston is not.

The best public service any Houston administrator or politician could provide would be to demand the city adopt Microsoft Word and its related tutorials.

Jay Bute, El Lago

Ode to old-style theaters

Jane M. Cahill's Aug. 10 Viewpoints letter, "Houston has a woeful record on historic preservation," prompted me to reminisce about my growing-up years in Houston.

I was a teenager in the 1960s, and on Saturday night dates, we would often drive to the movies downtown.

We had three great choices and, now, none of those beautiful, opera-house style buildings are around. Houston has never been interested in preserving its architectural past; but I will never forget the many evenings spent in those proud old structures.

Dixie Cason, Houston

An idea to slim down

We have heard about how fat we are in Houston and how bad it is for our health. Health arguments, however, don't seem to be compelling enough for many of us to change our bad eating - and poor exercise - habits. Maybe some economic encouragement would help.

Health-related insurance policies cost more if the insured is a smoker. Since fat (just like cigarettes) shortens a person's life and adds to health-care costs, the insurance companies could offer an incentive for losing some pounds or at least not being overweight.

With a set-up like this, Houston could become the nation's trimmest city. Wouldn't that be great?

William B. Braden, Houston

# APPENDIX AN

## *The fall of Enron; a year ago, Enron's crumbling foundation was revealed to all when the company reported its disastrous third-quarter numbers. Its growth-at-any-cost culture led it to bankruptcy - and ignominy.; the pride and the fall*

THE HOUSTON
CHRONICLE

Sunday, October 20, 2002

4 STAR EDITION

Correction Appended

Section A, page 1

By Staff, Tom Fowler

Enron's tumble from Wall Street darling to corporate deadbeat seemed precipitous. A year later, it's clear the fall was a long time coming.

While the company grew rapidly through the 1990s, some of the worst manifestations of its culture - obsessions with bonuses, the stock price and exotic accounting - were also growing, and out of control.

Though the corporation's character flaws can be traced to its earliest days, they flourished under top executive Jeff Skilling.

He didn't act in a vacuum. Enron had a distracted, hands-off chairman, a compliant board of directors and an impotent staff of accountants, auditors and lawyers.

But it was Skilling's relentless push for creativity and competitiveness that fostered a growth-at-any-cost culture, drowning out voices of caution and overriding all checks and balances.

Skilling's attorney derides as "ridiculous" any suggestion his client allowed internal controls to be overriden. But interviews with dozens of current and former employees over the past year reveal that the creative aggressiveness Skilling deemed essential to dominating new markets went untempered by good business sense or fiscal discipline. The same decisions lauded as key to the company's future were also key to its demise.

"It was all about taking profits now and worrying about the details later," said one former Enron deal maker. "The Enron system was just ripe for corruption."

Enron's culture wasn't spawned overnight. Its roots go back to the earliest days of the company, before Skilling came aboard.

In 1987, company auditors learned of a billion-dollar oil-trading scandal at the company's Valhalla, N.Y., offices. For years, traders there had falsified transactions to boost volume - and fatten their bonuses.

Instead of firing the traders and contacting authorities, Chairman Ken Lay and his management team kept them on the payroll and tried to cover up the problems. Lay said the company needed the revenue.

Six months later, however, the traders had dug the hole even deeper and competitors were growing suspicious. If word got out, Enron's trading partners could have demanded the company cover its positions with cash, which it didn't have.

Only then were the traders fired and charged with crimes. Enron narrowly skirted insolvency by bluffing the markets, then slowly unwinding the trades. The company later reported an $ 85 million loss, but sources say it was probably at least $ 136 million.

Not long after, in the early 1990s, Enron made one of its earliest uses of creative financing, through a massive English power plant project known as Teesside. Enron owned about half of the project but was able to book as much as $ 100 million in revenue while the plant was still being built by acting as its own general contractor. That was years before the project earned a dime.

Teesside was also one of the earliest deals where managers reaped the benefits of an aggressive bonus program. Those who closed major deals were paid up to 3 percent of the value of the entire deal, payable when it was struck, not when the project actually began earning money. Many former employees say this upfront bonus encouraged deal makers to inflate their projected returns.

Deal inflation eventually became so widespread that one division, Enron Energy Services, had to eliminate its bonus program.

"They realized they couldn't pay us real bonuses based on alleged profits," said a former deal maker with EES.

Such practices were a byproduct of the company's obsession with its stock price, which was driven in the earlier years by Rich Kinder, chief operating officer from 1990 to 1996.

Changing of the guard

Kinder, a lawyer, began as chief counsel but gradually became more like a president and chief financial officer, demanding his managers meet lofty earnings targets, said former executives.

"He was very bottom-line oriented and would terrify people if they didn't meet their goals," said former chief tax counsel Robert Hermann, who left Enron earlier this year. "If he could have opened his office windows I'm sure he would have made people walk the plank."

Kinder left Enron in 1996 when it became clear Lay would not be stepping aside soon. That opened the door for Skilling, who had joined Enron in 1990 after working with the company as a consultant with McKinsey & Co. Except for their desire to grow the company, the two could hardly have been more dissimilar.

Kinder focused on operations and cash flow, the best single indicator of a company's real earnings. He met weekly with all division heads and grilled them on details, especially expenses.

"Kinder would approve an expense as if it were from his own checkbook," said Alberto Gude, a former vice president of information services. "He made you work through the details of your spending before he'd say OK."

Skilling did not care about expenses or seemingly much about day-to-day operations. Former colleagues say he disliked meetings, delegated responsibility and relied heavily on Chief Accounting Officer Rick Causey for details of what the many divisions of the company were doing.

Instead of cash flow, Skilling was concerned about revenue increases and widening profit margins.

"It was a well-known fact that Skilling didn't care what the expenses were so long as the margins looked good," said George Strong, a longtime lobbyist for Enron.

That became a problem beginning in the mid-1990s, when the company began buying, expanding and launching businesses left and right.

"There were a lot of start-up businesses, so I guess he was content to let them have expenses since that's what it took to build new business," Hermann said. "But there came a point in time where he needed to call them in and say 'OK, enough's enough.' "

"When Kinder left and Skilling took over the presidency," Strong said, "I started feeling that people were not looking at the longer-term perspective."

No hiring of 'softies'

A classic example of the short-term thinking came when Strong recommended the company try to win a lucrative energy management contract for a major public school district.

"I told a manager that replacing the school district's current company wouldn't happen overnight, that it could take as long as a year to convince them. But I hit a brick wall," Strong said. "He said, 'I haven't got a year. If I can't do it in three months I won't do it because my bonus depends on it.' "

That attitude was a product of the atmosphere Skilling nurtured, his former colleagues say. A key component of that atmosphere was hiring a certain kind of person. In the late 1990s, the human resources department began giving recruiters a new set of "cheat sheets" on what to look for in job candidates.

"It was not your typical, hard-working, extracurricular-activities type of student," said one manager who helped with recruiting. "It was a sharp-dressing extrovert, someone who would fit in as a ruthless trader. We weren't looking for softies."

Drawn from Harvard, Yale, Princeton, Rice, Northwestern and other leading universities, the new hires were smart, even brilliant, but did not prove to be good managers.

"If you keep telling people how smart they are, after awhile they start to think they have nothing else they need to learn," said one former manager, now in his mid-30s. "It was such a go-go, high-achievement environment that there wasn't close monitoring to make sure people learned the basics of good management."

The atmosphere became something like a college fraternity, where traders and deal makers were treated as brothers and the rest of the staff as pledges, said a former recruiter.

"Working in any of the support positions was like going through rush," the former recruiter said. "You'd have to become aggressive and ruthless before they would say, 'Good boy, you're one of us now.' "

To enforce his particular vision, Skilling encouraged all units to use an employee-evaluation process he first implemented in Enron Capital & Trade, the division he first led.

That process - "rank and yank," as it came to be called - came to epitomize the company culture. Employees spent about two weeks annually ranking fellow employees' value to the company, from 1 down to 5. The process could be brutal, and often led to employees downgrading their peers to make themselves look better. And each division was forced to rank a fifth of the employees as 5s.

"We hired the best and brightest people, but now they were telling us we had to arbitrarily fire 20 percent of them. Why would we want to do that?" Hermann said. "Every company in America uses some sort of rating system, but the way it was used at Enron was just too divisive."

Skilling's attorney, Bruce Hiler, said the idea that Skilling created a culture that damaged the company is "ridiculous."

"There was an extensive internal control environment, which my client was instrumental in putting in place," Hiler said. "There were about 15 people that reviewed people for performance ratings, which would mitigate any possibility of anybody holding things over the heads of others. It just doesn't make sense."

Sensible or not, many others say, it happened regularly.

People had to get it

The cultural changes in the company even threatened the very language that defined the company's values: respect, integrity, communication and excellence. In the late 1990s, the company's Visions and Values Task Force considered expressing the principles with words such as "smart," "bold" and "aggressive." The effort failed, but it spoke volumes about what was afoot at Enron.

Smart, bold and aggressive people tend to get impatient with rules. The relentless demand to create new ways to make money - or appear to make money - spawned an environment where raising questions about a deal was considered disloyal or, worse, an indication someone "didn't get it."

In theory, Enron had mechanisms in place to raise such questions, to assess risk and accurately report financial numbers.

Enron's external auditor was the once-venerable Arthur Andersen, dubbed the "Marine

Corps of accounting" for the hard-nosed attention to accounting standards it once exemplified.

Enron required that deals be rigorously analyzed, a process that often included review by the legal department of the originating unit, the corporate legal department, the chief risk officer and chief accounting officer.

But the system was easily overridden. Deal originators could determine the total value of their proposals by manipulating such factors as the long-term price for whatever was being bought or sold. Their bonuses were based on the total value of the deal, not the cash it brought in.

All this was designed to pump up the quarterly reports, made possible by "mark-to-market" accounting, a system Skilling pushed Enron to adopt in 1991 that allows a company to report as current revenue the total value of a deal over its projected lifetime.

Mark-to-market as it was used at Enron made earnings look good, pumping up the stock price and increasing the value of the thousands of stock options executives received as compensation.

"It was a moral hazard being able to record your profits immediately," one former executive said. "It created many temptations."

Squelching dissent

Resisting that temptation was difficult. Testimony from the Arthur Andersen criminal trial earlier this year detailed how external auditors were often bullied to sign off on complex and controversial accounting maneuvers.

Andersen partner Carl Bass said he was demoted from his role on the firm's prestigious internal review group when Enron officials complained about his objections to certain deals.

Former Enron executive Jeff McMahon testified to Congress early this year that Skilling essentially demoted him after he complained about Andrew Fastow's dual role as CFO and manager of two outside partnerships that invested in Enron deals.

McMahon said Fastow had told him afterward, "You should assume everything you say to Mr. Skilling gets to me."

And former Merrill Lynch analyst John Olson has said he was forced out of his job with the company in Houston after his persistent criticisms of Enron.

Members of Enron's own internal watchdog group, Risk Assessment and Control, found it particularly difficult to say no. Those who tried to stop deals regularly were given negative performance reviews under "rank and yank," said former employees.

"The RAC would say the assumptions made in a deal weren't realistic, but they were never able to kill a deal," said a former worker who tried to push deals through the group. "They could be pushed around because they knew we could screw them over through the performance review committee."

Another former trader said his boss's attitude toward accountants and risk managers was typical of many in the company: " 'If they're not here helping us close deals, there's no need for them,' " he said.

Deal makers regularly invoked Skilling's name when trying to get their proposals approved, a tactic that carried much weight because the head of RAC, Rick Buy, answered to Skilling.

Top dog's fear factor

The influence of Skilling went beyond his official title. In a company stuffed with brilliant people, he was arguably the smartest.

One of the top students in his class at the Harvard School of Business and a former partner at consulting powerhouse McKinsey, his intelligence was often intimidating, even to customers and business partners, Hermann said.

"In a business situation you begin to wonder if you're going to be taken advantage of when you're facing someone so smart," Hermann said. "We'd have to send marketing people out after they met Jeff to calm them down and reassure them we were good people."

A senior engineer involved in international projects described one rank-and-yank session when Skilling cut off some positive comments about a company veteran: "This guy has spent 30 years in the same job in oil and gas. If he's that good he'd be a trader by now."

The Skilling fear factor rubbed off on a handful of other top executives whose close ties to him made them known as "Friends of Jeff." They included Ken Rice and Kevin Hannon, the two top executives with Enron Broadband; Greg Whalley, the president and chief operating officer of Enron Wholesale Services who became president and chief operating officer of the company after Skilling left; Dave Delainey, the CEO of Enron Energy Services; and John Lavorato, a top energy trading executive.

Some observers believe Skilling's style was a product of his background with McKinsey.

"Rank and yank" was a variation on a system developed by McKinsey. The "asset light" mantra that Skilling preached - of a company that owned few hard assets and made all its money off trading and services - was also a McKinsey-endorsed concept.

But like many consulting firms, McKinsey has gained a reputation as a flock of thinkers, not doers. Great at devising grand strategies, but not at making them work over the long term.

Skilling's background was reflected in his hands-off approach to details. Soon after taking over as chief operating officer, he revived the long-dormant post of chief financial officer and delegated many of the management responsibilities that Kinder had overseen to other executives.

The McKinsey influence can also be seen in his vocal belief that Enron could adapt the skills it developed in creating energy trading markets to such disparate products as Internet bandwidth, paper products and even weather.

The belief was so strong that it wasn't felt necessary to hire executives with telecommunications experience to build its broadband business. Instead, it simply gave the job to successful gas traders such as Rice and Hannon.

"These were people that didn't know how to spell 'broadband,' nevermind run that business," said a former senior vice president. "But if you questioned them and the wisdom of the business, you would be ridiculed because you 'didn't get it.' "

And when a business did fail or a deal fell apart, more effort was put into hiding the consequences than owning up to the problem. Debt and losses were anathema to Enron's financial statements.

In late 2000, for example, officials with EES, the division formed to sell power at the retail level, decided to remove the hedges it had put on several big energy trades so it could lock in the higher prices they were fetching during California's energy crisis. The maneuver allowed EES to report a big profit one quarter, but when the markets broke the other way, it was hit with a loss of as much as $ 800 million.

Rather than report it, former employees say, EES' trading activity was shifted under Enron's main trading business, where the huge revenues easily concealed the big loss. The reason for the shift was never publicly disclosed.

Similarly, four particularly notorious Enron partnerships, known as the Raptors, were created solely to hide losses.

The Raptors were set up in late 2000 as hedges against the declining value of investments in other companies. For example, in 1998 Enron invested $ 28 million in Rhythms NetConnections. When the Internet service provider's stock went up, it was worth more than $ 500 million to Enron. The company then recorded the increase as revenue even though it didn't sell the stock.

Since mark-to-market accounting would require Enron to report a decrease in Rhythms' share price as a loss, Enron put the stock into one of the Raptors as a hedge against such a drop. But Enron used its own stock as its contribution to the partnership, assuming that its own share price would not fall. When both stocks fell at the same time, the Raptor went bankrupt.

In retrospect, Enron's problems may seem obvious. But the view from inside the company was rarely clear.

"Every division and business unit was like its own silo, separate from all the other businesses," said the former CEO of one of the divisions. "It was decentralized and not heavy on teamwork, with all of the divisions in competition with each other for resources."

How did it get this way?

Many employees say they saw things that were a concern, such as over-the-top bonuses and rampant expense-account abuse.

"I used to feel bad about the cost of my hotels overseas, so I'd eat at Taco Bell," said a former division president. "But then I'd hear about these young managers dropping hundreds of dollars every night on meals, and I wondered what had happened to allow that."

But since most only saw their part of the business, they assumed the problems were isolated.

"You understood your piece of the business and maybe what the guy next to you did, but very few understood the big picture," a former broadband worker said. "That segmentation allowed us to get work done very quickly, but it isolated that institutional knowledge into the hands of very few people."

Despite the company's downfall, many former employees say they still do not regret their time there.

"I lived the culture at Enron for 10 years and I really think it was the individual executives who did this to us," said a former trading executive. "Most everybody I knew at the company was honest and charitable."

"I don't think anyone started out with a plan to defraud the company," Hermann said. "Everything at Enron seemed to start out right, but somewhere something slipped. People's mentality switched from focusing on the future good of the company to 'let's just do it today.'

"But once you start doing deals like that, maybe your mindset changes. Maybe you start to do deals just to do them."

Over the years, Strong said he saw many opportunities for key Enron employees to speak up.

"But they chose to look the other way," he said. "The culture wasn't one that wanted to hear about such concerns."

"In principle the system would work," said a former executive. "But it broke down because those expected to hold others accountable either didn't have the power to do their job or they lacked the will.

"In a business as risky as ours you can't afford to take off the safeties."

KEY PLAYERS

Ken Lay, 60

Son of a Baptist minister, grew up in Tyrone, Mo. Earned doctorate in economics from UH. Was perhaps Houston's most influential power broker. Helped win approval for baseball park and was close to major politicians. In 1984, became chairman and CEO at Houston Natural Gas. It merged with InterNorth within a year, dubbed the new company Enron. Resigned Jan. 23.

Jeff Skilling, 48

Earned MBA from Harvard and went to work for McKinsey & Co., world's largest management consulting firm. Joined Enron in 1990, drove it from a lumbering pipeline company into something akin to a Wall Street trading house. Became president and chief operating officer Jan. 1, 1997. Named CEO in February 2001, resigned less than seven months later.

Richard Kinder, 58

Lawyer known for pinching pennies, ran Enron's day-to-day operations as president and chief operating officer from 1990 through 1996. A tough boss, he demanded managers meet projections. Left the company when Lay decided not to retire. Now president and CEO of Kinder Morgan Energy Partners.

Andrew Fastow, 40

Earned MBA from Northwestern. Joined Enron in 1990. A protege of Skilling, who named him chief financial officer. Lauded by CFO Magazine for "innovative financing techniques" ... Set up off-the-books partnerships that benefited Enron by hiding debt and inflating revenue. Dismissed Oct. 24, 2001 Now charged with fraud and money laundering.

Sherron Watkins, 43

Attended high school in Tomball. Earned bachelor's and master's degrees at UT. Wrote now-famous memo to Ken Lay on Aug. 15, 2001, describing accounting scandals, then met with him to discuss her concerns. Still an Enron vice president, working with author on a book about her experiences at Enron. Made-for-TV movie in works.

Michael Kopper, 37

Majored in economics at Duke University, earned a graduate degree at the London School of Economics. Worked at Toronto Dominion Bank before joining Enron in 1994. Became key aide to Fastow and helped create off-the-books partnerships Pleaded guilty in August to money laundering and wire fraud, admitted giving kickbacks to Fastow.

Richard Buy, 50

Got bachelor's degree in mechanical engineering and a master's degree in finance from Rensselaer Polytechnic Institute and a master's degree in petroleum engineering from UH. As vice president at Bankers Trust, worked in energy lending and trading. Joined Enron in 1994. As chief risk officer, was supposed to review and approve all deals with LJM partnerships, but investigators say he failed to do so. Took the Fifth Amendment before Congress Fired in February.

Ben Glisan Jr., 36

Clear Lake native, earned bachelor's and master's degrees from UT. Worked for Coopers & Lybrand accounting firm in Dallas and Arthur Andersen in Houston before joining Enron in 1996 Rose to treasurer in 2000. Earned $ 1 million on $ 5,800 investment in one partnership. Fired in February.

Jeff McMahon, 41

Graduated from the University of Richmond in Virginia, started career with Arthur Andersen in Houston. ... In 1989, became chief financial officer of MG Natural Gas Corp. in Houston. Joined Enron in 1994, serving as chief financial officer for European operations and treasurer. Promoted to chief financial officer after Fastow was ousted in October 2001. After Enron went bankrupt, served as president and chief operating officer. Credit-rating agencies testified he was among the Enron executives who purposely misled them as far back as 1999. Resigned in April. Heads own consulting group.

Richard Causey, 42

After getting master's degree in accounting from UT, joined Arthur Andersen, rising to senior manager. Went to Enron in 1991, rose to chief accounting officer. Fired in February 2002. Has told investigators he believes Skilling approved the restructuring of partnerships that prevented reporting a $ 500 million loss. Not yet charged, but could be a witness against Skilling.

J. Clifford Baxter, 43

Close friend of Skilling, resigned as vice chairman in May 2001. In January, fatally shot himself in his wife's (SEE CORRECTION) Mercedes-Benz, a short distance from his Sugar Land home in the middle of the night. Friends have said he was deeply depressed over the company's collapse. In her memo to Lay, Watkins said he had "complained mightily to Skilling and all who would listen about the inappropriateness of our transactions with LJM".

David Duncan, 42

Accounting grad from Texas A&M, began with Arthur Andersen in 1981. Headed its Enron team since 1997. Admitted he ordered Enron-related documents shredded in October, two days after learning of a federal probe. Pleaded guilty to obstruction of justice, awaiting sentencing Investigators say Andersen sanctioned many of

Enron's accounting schemes that led to misleading financial results.

Nancy Temple, 38

Studied accounting at the University of Illinois, then got law degree from Harvard. Joined Arthur Andersen in 2000. Wrote the memo that led jurors to convict the firm in June of obstruction of justice. In it, she indicated she and others at the firm knew as early as October 2001 that the Securities and Exchange Commission could be looking into Enron's accounting problems. On Oct. 12, she e-mailed Andersen's auditors at Enron, reminding them of firm's document-retention policy. Shredding began 10 days later. Did not testify at the trial, citing her Fifth Amendment rights.

Kristina Mordaunt, 52

Lawyer in the Enron finance division before joining broadband unit. Invested $ 5,800 in LJM1 and saw a return of $ 1 million within months. Like Glisan, was supposed to represent Enron's interests in transactions with LJM2. Prosecutors are trying to seize $ 1.6 million from Mordaunt, plus a house and her husband's car.

BUSINESS WEEK

July 24, 2000

"With so much profit at stake, Enron won't have the online trading market to itself. Energy rivals such as Williams Cos., based in Tulsa, and Dynegy Inc. in Houston, are teaming up to challenge Enron in online trading."

WALL STREET JOURNAL

April 19, 1994

"Enron and British Gas are the new paradigm of the surging, $ 120 billion-a-year global gas market, racing across five continents to plant their corporate flags in a flurry of ambition that had been unheard of in their stay- at-home industry. They are reinventing themselves as the first international gas utilities -- able to leap in almost anywhere to drill wells, build pipelines or power plants and make home and industrial hookups that create markets for huge foreign fuel reserves that had been largely ignored."

FORBES

July 24, 2000

"Enron is pushing into new markets -- bandwidth, remote data storage, even eyeballs. Eyeballs? Enron can use its middleman role to guarantee reliable delivery of, say, a pay-per-view movie, to millions of households. Bits or Btus -- on the Web, they aren't all that different."

FORTUNE

April 17, 2000

"No company illustrates the transformative power of innovation more dramatically than Enron. Over the past decade Enron's commitment to the invention - and later domination -- of new business categories has taken it from a $ 200 million old-economy pipeline operator to a $ 40 billion new-economy trading powerhouse."

HOUSTON CHRONICLE

April 15, 2001

Skilling does not believe Enron will be that much different of a company five years from now, other than it likely will have expanded the roster of commodities it trades. But Lay still is expecting big changes. "It will be a totally different company just like it is today versus five years ago," he said.

CORRECTION-DATE: October 22, 2002

CORRECTION: It was incorrectly reported in a graphic that accompanied this story that former Enron executive J. Clifford Baxter committed suicide in his wife's Mercedes-Benz. In fact, he committed suicide in a car, but not hers.

# APPENDIX AO

## *Negative news puts hurt on downtown office market*

THE HOUSTON
CHRONICLE

Sunday, December 01, 2002

2 STAR EDITION

Section BUSINESS, page 8

By Staff, Ralph Bivins

THE image of Houston's commercial real estate market has slipped in the eyes of the nation's real estate executives, a new study shows.

The bankruptcy of Enron Corp. and its fallout in the downtown office market have created some negative perceptions about Houston, said Jonathan Miller, editor of Emerging Trends in Real Estate 2003.

Enron's new 1.2 million-square-foot office tower sits almost vacant and is being sold by the bankruptcy court. In addition, Enron vacated huge chunks of space in other downtown buildings.

Houston's downtown "Class A" office vacancy has risen from 2 percent to 10 percent over the last year. Two more downtown towers are under construction and will deliver more vacant space to the market next year.

These conditions have not gone unnoticed by the 170 developers, investors and analysts who were surveyed to produce the new Emerging Trends report.

Last year the survey ranked Houston as the nation's 12th best city for real estate investment and development. Houston slipped to 15th this year. Washington, D.C., was first.

Overall, the nation's commercial real estate market will be soft in 2003 as the economy remains sluggish. Increased hiring and more corporate spending eventually will lift real estate out of the doldrums.

"We don't see recovery in real estate until 2004 or 2005," Miller said.

The Emerging Trends report suggested that investors should look to purchase warehouses in major transportation hubs or bargains in Silicon Valley or other high-tech cities where real estate has taken a tumble.

The report also suggested developers should be cautious about building new commercial projects and particularly should stay away from building new motels.

The Lend Lease realty firm and PricewaterhouseCoopers produced the Emerging Trends study.

Market Street gets partner

Kimco Realty has been brought in as a partner in the new $ 90 million Market Street at The Woodlands project.

Construction recently began on the Market Street project, which will have 376,000 square feet of retail space and 92,000 square feet of office space.

Trademark, a Fort Worth-based real estate firm, is the primary developer of the Market Street project. Kimco, a large national shopping center investor, will provide equity for the project and assist in finding retail tenants, said Tommy Miller, chief investment officer of Trademark.

Market Street will be a pedestrian-oriented retail center with office space above street-level retail. The project was designed by Baltimore-based Development Design Group.

Trademark and Kimco have been joint-venture partners previously on another retail center, the Gateway Station in Burleson, a community near Fort Worth.

Hines venture buys building

A partnership led by Hines, the Houston-based realty firm founded by Gerald Hines, has purchased an office project in the Los Angeles area.

The Hines/GE Real Estate venture bought the Manhattan Towers in Manhattan Beach, Calif. The purchase price was in excess of $ 60 million. The seller was a joint venture of Divco West Properties and Charlesbank.

The Manhattan Beach Towers includes two six-story office buildings with 309,705 square feet of space.

Manhattan Beach Towers is the first purchase for the Hines/GE Real Estate venture. The organizers of the venture intend to acquire $ 650 million worth of suburban office buildings around the nation.

Apartments losing tenants

Houston home builders are on their way toward the strongest year ever for new-home sales.

But while home building is booming, apartment landlords are feeling the competition.

Thousands of apartment dwellers are buying homes because low mortgage rates have made those purchases so affordable.

Apartment occupancy for the Houston area was 93.2 percent in the third quarter, down from 93.5 percent a year earlier, according to O'Connor & Associates.

Landlords have been able to achieve some modest rent increases.

The average monthly rent was 76 cents per square foot in the third quarter, up from an average of 73 cents per square foot a year earlier, O'Connor reported.

Developers are still finding promising areas to build apartments, such as the Medical Center area and West Houston, said Richard Zigler, director of research for O'Connor.

# APPENDIX AP

*'Crooked E' scores direct hit in local ratings battle*

THE HOUSTON
CHRONICLE

Tuesday, January 07, 2003

2 STAR EDITION

Section HOUSTON, page 1

By Staff, Mike McDaniel, Clifford Pugh

Despite mixed reviews, The Crooked E: The Unshredded Truth About Enron made out like a bandit Sunday night.

The CBS movie about the Enron scandal was the evening's most-watched program in Houston from 8 to 10 p.m. Nationally, the movie finished No. 2 during its time period.

In Houston, The Crooked E attracted a 14.8 rating and 21 share for KHOU (Channel 11), meaning that nearly 15 percent of Houston homes with TV watched the movie, or 21 percent of the local population who had their televisions on.

Its closest competition was on Fox's KRIV (Channel 26), whose 8-10 p.m. lineup of Malcolm in the Middle, Andy Richter Controls the Universe, news and sports averaged an 8.3 rating and 10 share. ABC's tandem of Alias and The Practice was right behind, averaging an 8.2 rating and 11 share for KTRK (Channel 13). On NBC's KPRC (Channel 2), Law & Order: Criminal Intent and Boomtown managed a 5.9 rating and 8 share.

Nationally, NBC won the night with a 9.2 preliminary rating and 13 share. The Crooked E took second with an 8.5 rating and 12 share. Fox was No. 3 from 8 to 9 p.m., while ABC's The Practice was No. 3 from 9 to 10 p.m.

National TV critics praised the idea of the movie, while offering less acclaim to the finished product.

Tom Shales of the Washington Post expressed amazement that a major network tackled the subject of a "massive, monstrous case of corporate corruption," because it's "the kind of topic that conglomerate-owned networks normally avoid."

Shales added, "Though hardly brilliant or inordinately clever, the script brings us face to face with the cold dark heart of the story: wanton, heedless greed."

Los Angeles Times staff writer John Friedman wrote that a measure of good has come from the Enron collapse with "two hours of wry, cautionary entertainment in the form of The Crooked E."

"Regardless of whether it captures the unshredded truth of the Enron saga in a literal sense, (director Penelope) Spheeris shows a knack for finding a bizarre culture's absurd essence," Friedman wrote.

Patricia Pearson of Canada's National Post wrote that Crooked E "is a cheap quickie of a movie, but in that sense it is nicely illustrative of the wider issues" of the Enron scandal.

Dallas Morning News critic Olin Chism also had mixed feelings.

"It might be hard to imagine caricaturing the Enron scandal - the ill-doing was so grotesque to start with - but CBS has managed to turn the trick," he wrote. Yet he found it "grandly entertaining as a moral fable with many hissable villains."

Amy Amatangelo of the Boston Herald certainly wasn't on the fence about the movie.

"Surely, this isn't the most interesting story the walls of Enron have to tell," she wrote.

# APPENDIX AQ

*Ronald Reagan's Army In your heart, you know the Yuppie Prick$ are right*

HOUSTON PRESS (Texas)

Thursday, February 19, 2004

Section Music/Columns

By John Nova Lomax

Austin's Yuppie Prick$ exist beyond the parameters of the never-ending "What is punk?" debate. Completely. While their music undoubtedly has much in common with the Buzzcocks and the Sex Pistols, their backgrounds and lyrics do not. Not for them the dead-end jobs as butcher's assistants or fish-and-chips counter help, nor the frustrations of lives in the dole queue. Nope, this is a punk band only Jeffrey Skilling and Andrew Fastow could love, or maybe even join. According to their Web site, Yuppie Prick$ lead singer Trevor Middleton -- the heir to a pharmaceutical fortune -- has an estimated worth of $30.5 million; guitarist Deuce Hollingsworth claims to be the only third-generation divorce lawyer in the Southwest; drummer Nigel Smythen-Wesson is the ne'er-do-well scion of a wealthy English family who joined the band after "pranging" his Bentley into Middleton's BMW; bassist (and Houston native) Preston Hetherington is a multimillionaire stockbroker who lists one of his hobbies as "hunting endangered species." (Another of his off-stage pursuits is the operation of an Internet porn site -- he regards the band's shows as fine talent-scouting opportunities.)

That's what their bios say, anyway, so it must all be true. At any rate, as you might expect, the songs these guys write range far from the usual anarchic spleen-venting of the old-school punks, not to mention the "my parents/girls just don't understand me" harangues of the more recent crop of punks. Instead, they remake the Sex Pistols' "Anarchy in the UK" as "Prosperity in the USA," complete with lines like "I am the next Bill Gates / I buy and sell real estate." Then there's "Boo Fucking Hoo," in which Sally Struthers and other "feed the kids" types are brushed off with the blunt "I need a cup of coffee to stimulate my greed." There's also a salute to band hero Arnold Schwarzenegger -- in one of their songs, the burly Alpine politico gets a blow job in the most politically incorrect car of all time in "Hummer in My Hummer." (Sample lyrics: "As the Governator / I hereby decree / Wrap your lips around / My Austrian Red Heat.") And they penned the very first pro-suburbia song in punk history in "Suburban Living," wherein they boast that "We don't have drug deals down the block / You won't see crack whores sucking cock / All our drugs are kept inside / Don't keep blow in my ride / Suburban living is the life for me."

Which brings up a paradox. What could be more punk than rebelling against everything punk is supposed to stand for? The Yuppie Prick$ could very well be the most punk band on earth. But how does an obscenely rich, archconservative pharmaceutical heir become a punk rocker, anyway? Racket put the question to Middleton. "Boy, that's kind of a long story," he says. "I had some run-ins with the pops about future control of the company, and I had this disillusionment period where I kinda gave up some of my worldly possessions for a while and hit the streets." (He also had some burnout issues going; as he put it on the band Web site, "Three super-models and four grams of blow a day just wasn't cutting it anymore.") "So then I ended up at a couple of punk rock shows and fell in love with the music. And one time I was kind of passed out outside a club and this guy drove by and threw some pocket change at me. That kind of woke my ass up so I picked up all my credit cards and re-entered the real world, but I believed that people could still enjoy the musical part of the punk rock, without..."

He struggles to find the right words, a pithy way to explain the essence of the Yuppie Prick$.

"You don't have to be a poor loser to play good music and have a good time," he finally concludes. That's the heart of this band. You see, they are something like Christian rockers in that they use music as a Trojan horse, but instead of faith in God, they have faith in supermodels, fat bottom lines, leveraged buyouts, custom-built titanium drivers and towering mounds of uncut cocaine. They see their shows as punk PowerPoint presentations, though few sales meetings are as raunchy and cruel as YP shows, where the wretched losers who come to see them are peppered with abuse, lectured on the wonders of laissez-faire capitalism and showered with dollar bills -- some hurled from the stage, others whacked at them inside stuffed plastic golf balls. Another staple of their earlier shows is the ass-kissing segment, in which Middleton drops trou and offers the first person to kiss his bare butt a $20 bill. (The moral? That it pays to kiss ass in the music business.)

Evidently the Prick$ have smooched some of the right posteriors. They just finished recording their second album at renowned Austin studio the Bubble with Frenchie Smith of Young Heart Attack, and they will be shopping the CD at South By Southwest. One label that has nibbled so far is Alternative Tentacles, the Berkeley, California, outfit founded and run by punk legend Jello Biafra. Middleton believes their signing would be mutually beneficial. "He needs to have some proper conservative philosophy on his label, alongside that lib-rull hogwash they're usually spewing," he dryly notes. "He understands the mass-marketing possibilities -- he has a bunch of bands on his label that probably only sell a thousand copies. He has to be looking forward to a band like us that could actually make him a few dollars."

The band also has its first sponsorship deal lined up. "Hoven sunglasses got in contact with us today," Middleton says. "They're in the $50 to $70 range, so maybe one out of every ten of our fans could get them, as opposed to the zero out of ten that could afford the glasses we usually wear. Maybe we'll give away a pair every now and then to a lucky fan. Wouldn't that be a treat?"

This show marks their Houston debut, at least musically. Golf's another matter. "We've played TPC plenty of times, but never music," Middleton says. And though it seems the Bayou City would be a better hometown than hippy-dippy Austin for a band of Yuppie Prick$, don't expect them to make a habit of playing here, much less relocate. "All that pollution is damaging to the skin," Middleton says. "I prefer Austin."

That may be the only true thing he says in this article. The Yuppie Prick$ appear Saturday, February 21, at the Axiom, 2524 McKinney, 713-522-8443. Sons of Hercules and Gun Crazy are also on the bill.

Scuttlebutt Caboose Promoter Clement Aldridge is starting what he hopes will be a monthly industry showcase at the Engine Room. Called the Candu Showcase, the February 20 initial edition features Hollywood High, the Handsomes, White Noise Transistor and Drexl. White Noise Transistor is a young rock band produced by Derek Dunivan of Pure Rubbish fame...The Blue Monday jam is back on the corner of Dowling and Alabama, where the former Miss Ann's Playpen has been renamed Goodfellows, and Lady D and the Blue Flames have replaced Bobby Lewis as the host. Lady D's band includes Little Stanley on bass and vocals, former Albert Collins keyboardist Bobby Alexis, drummer Wayne Johnson and guitarist Sam Pemberton. As with

Miss Ann's, the Goodfellows jam is drawing in the big names -- I.J. Gosey, Little Joe Washington, Andy "Too Hard" Williams, Robert Mason, D.D. Brett, Rick Lee and Juan Abair, among others, have all already dropped in over the jam's three-week run, and Pemberton says that "any musicians young or old, white or black or other, are very welcome." The jam runs from eight to midnight...Vintage country-western swingsters Sean Reefer and the Resin Valley Boys will release their, ahem, smokin' debut CD, Texas Hill Country, next month. Catch 'em live amid the Mardi Gras madness at Java's in Galveston February 21...The Continental Club Cosa Nostra has a new club two doors down from their showcase. Shoeshine Charlie's Big Top Lounge is a much quieter alternative to the raucous bar nearby, and time flies past amid the retro furnishings, Falstaff and Pabst beer signs, cheesy paintings and 70-year-old circus-themed murals that line some of the walls in what was once, long ago, a toy store. So far, it's mostly just a hang, but the Dazzling Pete Gray will soon be tickling the ivories and leading the same sort of sing-alongs he's been conducting over at Leon's Lounge on McGowen, and other acts will play acoustic sets...Billy Joe Shaver has been announced as the opening act for Kid Rock. Shaver and Kid have been writing together, and the twosome recently had dinner in Nashville with Kid's ex-DJ and Motor City homie Uncle Kracker.

## APPENDIX AR

### *Perfect Fit Metro's new president already has a Houston attitude*

HOUSTON PRESS (Texas)

Thursday, April 29, 2004

Section News/Columns

Metro has chosen Frank Wilson, former head of transit in New Jersey and San Francisco, to replace the retiring Shirley DeLibero and oversee the $7.5 billion expansion of the light rail and bus systems. Metro chair David Wolff echoes widespread praise when he calls Wilson a "visionary," adding, "We are very fortunate to have him joining us."

"Visionary" isn't exactly the wording used by Jim Marketti, a union head from New Jersey, when describing Wilson. Marketti -- speaking in an idiom that we guess is called Garden State Modern -- says Wilson "is an arrogant fucking prick."

Aaah, get oudda here, Marketti -- are you fuckin' shittin' me or what? (Hey, this New Jersey stuff is great!)

"At one point," he says, "I had a bunch of professional engineers storming his office and I had to stop them from personally beating the shit out of the guy."

The enthusiastic discussion centered on a reorganization plan that slighted the unions in favor of privatization, which Marketti says is an obsession with Wilson. "You're in Houston, right?" he chuckles. "You're gonna have Halliburton running your rail line."

(Surely they wouldn't overcharge us, right?)

Wolff told the Houston Chronicle Wilson's resume is "the envy of any transit authority in the country." While officials (and the Chron) noted that Wilson famously paid a $1,200 fine for ethics violations in Jersey -- he was angling to get a job with two companies vying for big-bucks contracts with his department -- other resume highlights were missing:

" Three years after a grand jury criticized excessive travel spending by BART, the rapid transit agency headed by Wilson, he and the board racked up $250,000 in luxury travel in 1992, the San Francisco Examiner reported. In two years Wilson alone "cost BART more than $70,000 in travel expenses, including trips to Paris [and] Stockholm," the paper said.

" New Jersey is still reeling financially from Wilson's $500 million debacle of implementing an E-Z Pass system on the state's toll roads. Wilson claimed the system would pay for itself by fining violators and leasing space on its fiber-optic system; that "pay for itself" claim is now being blamed on press releases "that set expectations too high."

“ Less than a year ago, Wilson was one of three finalists to head the Livermore Amador Valley Transit Authority, a tiny California system with an annual budget of $10 million, about what Metro spends on pencils and Snapple. What's up with that?

Wilson didn't return calls, so we don't know. He apparently owns a home in Livermore.

But hey, a high-flying bureaucrat with a history of overpromising and a fetish for the magic of the private sector. How is this guy ever going to fit in Houston?

Just fine, we reckon.

Fire in the Hole If you're looking for tips on how to piss away a million bucks, look no further than the City of Houston. And as a bonus, it involves yet another sweetheart deal for the Donald Trump of the local restaurant scene, Tilman Fertitta. Step 1 -- Offer up the strategically located old Downtown Fire Station to Fertitta.

Step 2 -- Move firefighters across downtown to temporary digs that look like they were purchased from Sheds-While-U-Wait.

Step 3 -- Pay more in rent than you're getting from Fertitta: $270,000 a year to his $120,000. Make sure your lease increases your rent by $2K a month after three years, even though Fertitta is locked into a fixed 40-year lease.

Step 4 (Very Important) -- Do nothing.

Step 5 -- After two years and eight months, have HFD finally bring its recommendation for a new fire station site. Make sure the proposed site has toxic contamination that neither the owner nor city wants to pay to clean up.

Step 6 -- Start looking for another site.

Step 7 -- Repeat the Very Important Step 4, as often as necessary.

Meanwhile, firefighters in the temporary building would "prefer to be in a better situation," District Fire Chief Jack Williams says. Not in the least because their cars keep getting broken into.

They shouldn't worry -- a new building is no more than two or three years away. Probably.

"Bottom line, they need to keep moving forward quickly," says union chief Steve Williams. Who we sincerely hope is not holding his breath.

A Scourge Is Vanquished Houston city officials have a new, politically risk-free target in their sights: after-hours nightclubs. Ever since the tragic recent death of a firefighter at such a club, HPD has set up a "Hot Spot Task Force." If it's a "task force," you know it's important. And HPD pulled out all the stops April 17 when it made arrests at La Gaviota Club on Harrisburg. According to the HPD report on the operation: "Twenty-four patrons were intoxicated and...two others were arrested for outstanding city warrants." Another patron had some cocaine on him.

But the task force wasn't through tasking yet. "City inspectors issued a total of six citations...ranging from faulty plumbing and stagnant water to inadequate lighting." You mean it's against the law to be forced to slosh through a half-inch puddle of mysterious origin in order to take a leak at a dimly lit club? All these years, and we never knew.

Members of the media were out in full force for the "operation," which HPD insists was not a raid. Told to show up at 61 Riesner at one in the morning, they waited a couple of hours before getting the chance to film new Police Chief Harold Hurtt in action.

"It was even more of a dog-and-pony show than usual," says one journalist who covered the evening's entertainment. "Just some low-income drinkers -- there's no political repercussions there, for sure."

Unlike in some of the classier after-hours clubs, where we suppose no one at all is drunk.

No, You're Paranoid It's a little early to declare a winner in the Understatement of the Year contest, but we definitely have a leader in the clubhouse. It comes from the April 21 memo filed by federal prosecutors against Enron indictee Jeff Skilling. Prosecutors claim Skilling violated his bond by getting drunk in New York, brawling with bystanders he claimed were with the FBI and lifting a woman's blouse to see if she was wearing a hidden microphone.

Noting that New York cops originally thought Skilling was mentally unbalanced, the prosecutors told the judge that such a snap judgment should not be criticized in hindsight: "The police found it peculiar," they wrote, "to come across a man alleging falsely that he was being followed throughout the night by undercover FBI agents and speaking to the sky in an apparent attempt to be picked up by unseen FBI surveillance cameras."

They found that unusual? Wow, Manhattan. You've changed, man.

But come on, NYPD -- Skilling wasn't wearing aluminum foil on his head or anything.

We do have to admit, his delusions are beginning to make us doubt that he left Enron (just before the collapse) to spend more time with his family. But our faith is strong.

Help Wanted For the past year or so, there's been grumbling about a high-profile effort to force an election on a charter amendment that would cap city revenue increases, requiring voter approval for additional hikes in property taxes, water and sewer charges, and other city fees. Now it looks more than ever like it will happen. Hartman Management, the giant real estate company owned by charter proponent Al Hartman, has put out a help-wanted ad for someone "to organize, target and motivate voters" to support the proposal. "Familiarity with 'Let the People Vote' ideal!" is, complete with exclamation point, listed as a valuable asset.

That "Let the People Vote" crap means we'll have to endure yet another self-righteous campaign (by the people who brought you term limits) that will argue that voters should be allowed to vote on these things because they don't like the actions of people they elected to vote on them.

We're sure the folks at KSEV-AM will take time out from disparaging John Kerry's war record in order to spend countless hours on this.

The job pays "high 40s -- low 50s," the ad says. Ability to keep a straight face required.

This Time, For the Ladies Last week we offered our graphic-design services in our effort to pump up revenues for Governor Rick Perry's $5 "sin tax" on anyone who enters a gentlemen's club. But as every cliche writer knows, it takes two to tango, not to mention lap-dance. So we're not limiting our efforts to just the guys. We expect this poster to be up at every changing room at Treasures or Rick's or The Men's Club...or wherever there's a dancer who appreciates that public education got her where she is today.

-- As told to Richard Connelly

# APPENDIX AS

## *On Two; How do Lakers win series? Shaq must be major factor*

THE HOUSTON
CHRONICLE

Sunday, June 13, 2004

4 STAR EDITION

Section SPORTS, page 2

By Staff, John P. Lopez

AUBURN HILLS, Mich. - If statistics do indeed lie, as the adage tells us, then Shaquille O'Neal's are like former Enron CEO Jeff Skilling in front of a congressional subcommittee.

They tell a good story. They sound convincing - 25.7 points, 8.7 rebounds and 60 percent shooting from the field.

But that's not the whole story.

O'Neal probably is the greatest basketball player on the planet. If not that, then certainly he is the most dominant and is impossible to stop whenever he gets the ball in his favorite spot, low on the block near the basket.

Yet the Big Diesel in many ways is running on fumes in this NBA Finals against a Pistons defense that might not have stopped O'Neal but has managed to limit him to impressive numbers instead of impressive wins.

To watch this series unfold is to see a great player going long stretches without touching the ball, growing more frustrated with every sprint down the court that goes unfulfilled.

To see the way the Pistons often have dared to challenge O'Neal with a strategy that usually means a free pass to a resounding dunk - that is, man-to-man defense - is to see the biggest reason the Pistons own a 2-1 series edge going into tonight's Game 4.

Ben Wallace holds his own

Pistons big man Ben Wallace has drawn the man-to-man assignment most often and has effectively played O'Neal to a draw. For every powerful post move O'Neal has made on the way to an easy bucket, Wallace has managed to slip around Shaq for a steal or force him away from his comfort zone in the lane.

But a draw playing man-to-man against O'Neal has been more than enough to allow the rest of the Detroit D to play its game almost flawlessly.

Lakers coach Phil Jackson was asked Saturday about frustrations brewing within the locker room over all the little things that are limiting his team's effectiveness. Things such as Bryant being harassed into atypical production (41 percent shooting, including 13 percent from the 3-point line for the series).

Things such as complementary players not complementing - Karl Malone, Devean George and Derek Fisher are averaging just 18.7 points combined per game; point guard Gary Payton (3.7 points) has become a non-factor. And things such as O'Neal's numbers not reflecting just how tough a time he's had, especially in Game 3, when he finished with just 14 points and touched the ball just three times within the offense in the second half.

Jackson answered as if testifying before federal agents.

"I decline to answer that question," Jackson said, "on the grounds I might incriminate myself."

Big fella needs touches

O'Neal would have been asked the same thing but chose not to participate in Saturday's media session, perhaps a sign of how frustrated he has become.

If the Lakers are going to get back in this series, O'Neal has to shoot twice as often as he did in Game 3 (14 times) and force at least twice as many double teams.

As much as Jackson has complained about the officiating and not getting to the free-throw line enough, that all changes if O'Neal gets the ball. The biggest reason the Lakers have not heard enough favorable whistles has much more to do with forcing outside shots (they were 6-for-27 from

3-point range Thursday) and forgetting about O'Neal.

"The only way to guard (O'Neal) is to take time off the clock and limit his touches," Pistons coach Larry Brown said. "You can't really guard him. But maybe you can keep him from doing as much as he usually does."

Despite Bryant's abilities, this Lakers team was built around Shaq. Getting back into the series must be built around him, too.

# APPENDIX AT

## *Former Enron bosses get a bad rap*

THE HOUSTON
CHRONICLE

Monday, October 20, 2003

3 STAR EDITION

Section A, page 15 MetFront

By Staff, Janette Rodrigues

THE WORDS "Enron" and "rap" don't normally go together unless someone's talking about "taking the rap for Enron."

But if a former Enron employee has his way, we'll associate the corporate deadbeat with the thumping bass and braggadocio of rap music.

David Tonsall, 39, a former technical manager for Enron Energy Services, is unleashing rhyming words of wrath against the disgraced company under the hip-hop moniker "NRun."

His CD, Corporate America, drops Dec. 3, the second anniversary of the day Enron laid off 4,000 employees, including him.

"It's a spin on Enron," Tonsall said of his hip-hop handle. It also stands for "never run."

He played the corporate game at Enron, starting out in 1997 as a compliance engineer with the gas pipeline group and climbing on the management track over the next few years.

After losing his Enron job, he started an engineering firm, Synergistic Techneering.

Tonsall is frustrated that senior Enron executives, such as former Chairman Ken Lay and former CEO Jeff Skilling, whom many former employees hold responsible for the loss of their jobs and retirement savings, haven't been convicted of any crimes. He said the federal government should go after them with the same type of fervor it focuses on Osama bin Laden and other terrorists.

He lets the former energy bigwigs have it on his Web site, www.nrunwrekords.com.

"Skilling, going to find you, rain, sleet or snow," go some of his lyrics. "There's nowhere on earth that you can go . . . ready to get you for the Enron scam. Consider yourself a sacrifice for the pipeline workers that gave their lives, maintaining (the) lines that made you rich. When justice comes around you're going to get hit."

Another line from the rap goes: "America, NRun has a story to tell, how the judiciary system slowed down like a snail. Gave . . . corporate crooks time to plan their escape. So when I see you, Jeffrey, I won't hesitate."

Tonsall said his lyrics are set to the bangin' beats created by his producer, Slim Pimp.

So far, he said, he has spent $ 15,000 on his rap endeavor. He said he lost about $ 200,000 when Enron went under, taking his 401K with it.

# APPENDIX AU

## *The Skilling indictment; Most agree: Indictment overdue; Enron veterans say prosecutors getting closer to truth*

THE HOUSTON
CHRONICLE

Friday, February 20, 2004

3 STAR EDITION

Section A, page 15

By Staff, Purva Patel, David Ivanovich

Some expressed appreciation for the work of the Justice Department's Enron Task Force.

Others saw it as a step closer to the truth.

And a few couldn't believe he painted himself as a victim.

But there was one thing those whose lives were touched by the once-exalted company all seemed to agree upon: The indictment of former Enron CEO Jeff Skilling was overdue.

"I didn't think it would ever happen. I didn't think they'd actually get to Jeff Skilling," said Bryan Lari, a former data analyst at Enron who was laid off in 2001. "I'm glad they're indicting him. Maybe he is innocent, but I don't think so."

The 35-count indictment against Skilling charges he participated in a scheme to mislead regulators and investors about the company's earnings.

His attorneys, however, maintained during a mid-morning news conference Thursday that Skilling is innocent and a "victim" of his subordinates.

"I think his attorney needs to look in the dictionary and see what victim means," said Diana Peters who once worked as a clerk and service technician at Enron and serves as co-chairwoman of Severed Enron Employees Coalition. "Skilling is so not a victim. The victims are the employees, shareholders, retirees and the company."

Like Lari, she was concerned about how long it took the task force to get the indictment. But she was pleased with its work.

"The federal district attorney has done such a great job," she said. "I'm glad to see it came down."

Sally Craig, a software designer who now works with some former Enron employees at another firm, said she and her friends hope the indictment means prosecutors are closer to learning the truth about Enron's downfall.

Craig moved from Oklahoma to work in Enron's information technology department before being laid off when the company filed for bankruptcy in 2001.

Since then, she's been monitoring the headlines and says she hopes the charges mean "justice will be served."

Sherron Watkins, known for her memo warning that Enron could implode amid accounting scandals, said she wasn't surprised that Skilling was finally charged.

Skilling has been generally perceived as intelligent and integral to Enron decision making.

"Most people at Enron that know Jeff Skilling knew he'd be indicted at some point," she said. "Obviously the pace started to quicken once Fastow also pled guilty."

It's believed that former Enron chief financial officer Andrew Fastow, who agreed to serve 10 years in prison for two counts of conspiracy earlier this month, gave prosecutors information that aided the case against Skilling.

Unlike Fastow and other former Enron executives, Skilling faced scowling lawmakers on Capitol Hill and declared his innocence.

Two years ago, Skilling appeared before the House Energy and Commerce Committee, which has conducted investigations into many of the business scandals in recent years, from Enron to ImClone.

Ken Johnson, spokesman for the one-time head of that committee, U.S. Rep. Billy Tauzin, R-La., who turned over his chairman's gavel on Monday, had this to say:

"We find it more than a little ironic that in our last week at the committee Martha Stewart is on trial and Jeff Skilling is indicted. Looking back, I'd say we had a pretty productive tenure."

For Richard Rathvon, chairman of the Enron Employee Committee, which represents current and former Enron workers in the company's bankruptcy case, Thursday's indictment might lead to a trial that could bolster the civil lawsuits lodged against the company.

"We view this, as well as the Fastow indictments and others, as a step in achieving fairness and justice for former and current employees," he said. "It's these types of actions that bring out the facts."

Eventual guilty pleas or verdicts would also add fuel to lawsuits brought by shareholders.

"It's clear from evidence that has already been made public that Jeffrey Skilling's role in the Enron scheme is considerable," said Trey Davis, director of special projects at the University of California, which is the lead plaintiff in the Enron shareholder class-action lawsuit. "If this is a step toward the government obtaining new information about the fraud, it's beneficial to our case."

An Enron spokeswoman declined to comment.

# APPENDIX AV

*Former Enron employees cheer; A retiree and a young worker share their feelings on indictment.*

SAN ANTONIO EXPRESS - NEWS (Texas)

Thursday, July 8, 2004
METRO

Section A, page 7A

By Elizabeth Allen

In December 2001, Guy Freshwater was stranded in the United States, unable to get back to Scotland, his Enron job and all his money gone. At the same time, Charles Prestwood was sitting at his dining room table in Conroe, staring at statements that showed his once-million-dollar retirement fund of Enron stock reduced to nothing.

On Wednesday, both men were cheered by the news of Ken Lay's indictment. But 2 1/2 years after their worlds collapsed, they are in very different places.

Freshwater, 27, now works as a risk manager for a London law firm.

"I might open a bottle of champagne, then," Freshwater said to the news.

"I'm in the pub with a bunch of guys who'll be delighted to hear it," he added by phone.

Most of them had formerly been with the energy company, he said, and had landed on their feet, "hitting a few branches on the way," and are working in similar fields of trading, accounting and risk management.

Freshwater didn't join the lawsuits by former employees against the company, although the bankruptcy court did give him enough money to move back to the United Kingdom.

"You just go on with your life," he said.

Back in Conroe, Prestwood, 65, feels like he had about half of his life stolen from him.

A 33-year employee with the company since long before it evolved into Enron, Prestwood worked at an underground natural gas storage site.

He stayed loyal even after he retired in 2000 with all his savings in Enron stock, the encouragement of analysts and Enron executives ringing in his ears and a pleasant future of cross-country travel. The next year he watched helplessly as his savings simply evaporated.

"Everybody I talked to in the year 2001 financially lied to me all the way from Washington, the New York Stock Exchange, everywhere, because Ken Lay, he was going around telling everybody, 'The company had never been any stronger than it is now.' As a matter of fact, it was in its death spiral then."

Prestwood joined a class-action lawsuit to try to recover some savings. His case is expected to go to trial in 2006, and he's just hanging on until then.

He still has his modest house and two horses. He's sold one of two tracts of property inherited from his mother the day he was born, after she died in childbirth. He expects to have to sell the other soon.

But he had enjoyed watching the indictments move up Enron's corporate ladder, and he's happy to talk to reporters all over the world in hopes that justice will be done.

"It would be easier for you to convince the Jewish people that Adolf Hitler didn't have anything to do with killing the Jews in World War II than for you to convince me that Ken Lay was innocent," Prestwood said.

# APPENDIX AW

*What of Lay's claims? Answers lie in Valhalla*

THE HOUSTON
CHRONICLE

Friday, July 09, 2004

3 STAR EDITION

Section BUSINESS, page 1

By Staff, Loren Steffy; Loren Steffy is the Chronicle's business columnist. His commentary appears Sundays, Wednesdays and Fridays. Contact him at loren.steffy@chron.com.

IN Norse mythology, Valhalla was a gleaming golden city where the gods received warriors who died in battle. For Ken Lay, it was the Valhalla in New York that spawned a fountain of corporate greed and sin.

Lay's indictment this week, almost three years in the making, will undoubtedly renew the old debate about the fallen Enron chairman: Was he crooked or clueless?

Was he involved in Enron's shell games? Did he know what Enron was doing and simply turn a blind eye? Or was he so focused on glad-handing his White House buddies and wallowing in Houston's charity scene that he didn't know and didn't care what his company was doing? Was he duped by lower-level executives who were more cunning and conniving? It's a basic question in white-collar crime cases. How far up the corporate ladder did the knowledge of wrongdoing go?

Lay's lawyers are likely to argue ignorance. Nearly two weeks ago, Lay told the New York Times he takes responsibility for Enron's collapse but says he did nothing criminal. It's the doofus defense: I was in charge, but I didn't know what anybody under me was doing, so I'm innocent.

Valhalla belies Lay's claim.

Back in 1987, three years before Jeff Skilling and Andrew Fastow joined the company, Enron unleashed a rogue trading operation in the New York town. In those days, Enron was strapped for cash. It had more than $ 4 billion in debt that was in danger of default, it was posting losses because of tumbling natural gas prices, and the stock market crash that year undercut a public offering for its oil and gas business.

Up in Valhalla, though, things were looking up. Traders at the small operation were racking up profits by shorting crude oil, a bet that prices would fall, which they did. Emboldened by their success, the Valhalla traders continued to build their position until the unit eventually was short more than 87 million barrels. The division wasn't supposed to trade more than 12 million.

If crude prices rose, it would have broken the company because Enron would have been on the hook for as much as $ 500 million. At the time, the company's entire asset base was only about $ 400 million.

Former executives say they brought the issue to Lay's attention, but he dismissed it as petty jealousy because the Valhalla traders were making so much money.

Eventually they convinced Lay to audit the division. The threat of an audit prompted the division's president to reveal an even bigger problem. The Valhalla office had been keeping a separate set of books. The profits Lay had been counting weren't real. In fact, the office had been hiding losses by using phony trading contracts.

For three weeks, Enron executives worked to unwind the trades before they blew up and bankrupted the company. In the end, the company escaped with a $ 140 million loss. The unit's president, Louis Borget, pleaded guilty in 1990 to charges of conspiracy and filing false tax returns. He served a year in prison.

No more trading

In the weeks after the Valhalla incident, Lay gathered the company's employees together at Allen Center and told them the trading operation had been shuttered. People who attended the meeting say Lay promised that the company would never engage in speculative trading again.

Three years later, Lay hired Skilling, the hotshot consultant who knew a better way of doing everything. Skilling's credentials should have been suspect. He'd never run a company or worked at any job other than telling other people how they should do theirs.

But Lay must have loved what he heard. He backed Skilling in every corporate showdown, every internal political battle, and in 2001, handed him the reins of the entire company.

Lay created the environment for Skilling to thrive. Lay stood proudly in front of Enron's facade of success, while Skilling and his own protg, Fastow, ginned up increasingly convoluted mechanisms for concealing the financial reality.

### Laying the foundation

Did Lay know about the incestuous LJM partnerships? Was he aware of the Nigerian barge deal, the Raptor transactions, the sham that was the entire broadband trading operation?

A court will decide the particulars, but yes, Ken Lay knew. He knew because he laid the foundation for all of it.

He is, if nothing else, a terrible judge of character. Insiders say he touted Borget as a rising star, just as he did Skilling and Fastow. The pattern was as evident in 1987 as it was in 2001: executives of questionable moral character, secret bookkeeping, hidden losses, crisis, collapse, indictment and jail time. And through it all, Ken Lay's denials.

Lay's ignorance, if it exists, is a lack of knowledge by choice. He embraced the transformation of Enron from a real company into an ethereal lie. Lay knew of Enron's sins because even before Fastow and Skilling, there was Lay himself. There was his philosophy: as long as the money's coming in, I don't care how.

Was that crooked or simply clueless? Either explanation leads to the same conclusion. Leadership is about character and judgment. Whether crooked or clueless, Lay displayed neither.

It will be for a judge and a jury to decide whether any of that constitutes a crime in a legal sense. Lay's lawyers are among the best in the country. When their smoke screen clears, they may have succeed in arguing Lay was not guilty by reason of ignorance.

We all know better. The truth lies in Valhalla.

## APPENDIX AX

*Lay's World: all fantasy, all the time*

THE HOUSTON
CHRONICLE

Sunday, July 11, 2004

2 STAR EDITION

Section BUSINESS, page 1

By Staff, Loren Steffy; Loren Steffy is the Chronicle's business columnist. His commentary appears Sundays, Wednesdays and Fridays. Contact him at loren.steffy@chron.com.

LET'S take a trip inside the fantasy world that Ken Lay has created in his defense.

In Lay's World, corporate leaders can accept responsibility while deflecting blame. Top lieutenants are allowed to do side deals with the company, but the fact that they might enrich themselves is an outrage.

In Lay's World, concerns about the company's shady financial deals are brushed aside. When concern becomes reality, responsibility is brushed aside. The lawyers and accountants said it was OK. The CFO was a renegade.

In Lay's World, a CEO who presided over the greatest corporate implosion in history can keep a straight face while calling for more stringent enforcement of corporate governance laws.

Lay showed us a glimpse of his world at a news conference Thursday. The brightest bloom in the bouquet of sound bites was "failure does not equate to a crime."

Failure by fraud

No, but failure as a result of fraud does.

One of the assertions in the government's indictment is that Enron executives had allegiance to the company's stock price above all else, and that inspired Enron's misdeeds.

For the past three years, we've become used to seeing Enron connected with words like failure, collapse, bankrupt, fraud, greed, hubris. It's easy to forget that from December 1993 to December 2000, Enron's shares rose sixfold, to $ 84.63. That rise is important because it was the underpinning of Enron's entire structure, the center pole holding up its circus big top.

Stock-driven decisions

Lay knew if he could keep Enron's stock rising, no one would question how the company pulled it off. That's why Lay and the board went along with Chief Financial Officer Andrew Fastow's schemes. They were all driven by an unyielding belief that the stock would continue to rise.

The stock was collateral on loans. It offset debt held by Fastow's web of partnerships. It was the company's own private currency backed by the full faith of the board. Enron's shares rose, which allowed it to use the stock to back more deals, which in turn made the stock rise more.

Pulling off the ploy required a team effort and some tap-dancing around the truth. Enron's description to shareholders of its transactions read with the mind-bending flair of an M.C. Escher drawing. The masterpiece was Note 16.

Note 16 was the passage in the 10-K annual report Enron filed with the Securities and Exchange Commission in April 2001 that outlined what we now know as the Fastow partnerships.

The passage, of course, doesn't mention Fastow's name. It merely says, "In 2000 and 1999, Enron entered into transactions with limited partnerships (the Related Party) whose general partner's managing member is a senior officer of Enron."

To reveal the identity of the "Related Party," investors had to refer back to the proxy statement, filed a week earlier, where the company acknowledged that Fastow was running the partnerships, entering into deals with Enron and profiting from them.

Lay, along with the rest of Enron's board, signed the 10-K. As chairman, his signature in effect blessed the deals. One would assume he read his own company's proxy statement.

An arm's-length defense

Now, he wants to argue that Fastow misled him about the nature of the partnerships. Lay didn't insist on arm's-length transactions at Enron, but now that the cuffs are on, he's using the arm's-length defense.

Note 16 should have been a bright shining beacon to any board member that something was amiss. You can't work that hard to obscure the truth and then claim to be unaware of it.

In Lay's World, the issue, according to the news conference Thursday, was merely that Fastow spent too much time on the partnership work. In other words, everything would have been fine if Andy had just kept his sideboard profiteering in check.

The lengths the company went to, though, prove it knew it had something to hide. It proved that everyone involved - the lawyers, the accountants, and yes, Ken Lay - knew what the company was doing was wrong. Because all they had to do was tell the truth, and they fudged it.

They concocted a convoluted trail of words and tried to argue that it constituted disclosure because eventually, with enough diligence, it could possibly lead investors to the truth.

Clarity is as much an element of disclosure as fact.

As far back as late 2000, investors had begun to question Enron's businesses. One fund manager I spoke with at the time told me he sold his Enron holdings because he was uncomfortable with executives' predictions for the broadband trading business. Management never answered his questions about how many broadband contracts the company actually had. The truth, we now know, would have tanked the stock.

Critics be damned

Enron executives had a reputation for belittling critics. Skilling once called a fund manager an "asshole" for repeatedly requesting to see the company's balance sheet.

The vitriol was a smoke-screen. Enron's only real enemy was skepticism because it could undercut the share price. That's the reason Lay didn't want to spend much time investigating Sherron Watkins' memo.

When the stock began to fall in 2001, the fragility of Enron's foundation became clear, especially to Skilling, who abandoned his "dream job" as CEO after only six months.

Deep love or net worth?

In Lay's World, he returns to the chief executive role in August 2001 out of a deep love for the company. In reality, what choice did he have? A big chunk of his net worth was tied up in Enron stock. Following Skilling's lead and bolting for the door would have meant watching the stock's value plummet. The margin calls were already coming in. Leaving would have drained his net worth faster than a team of $ 800-an-hour defense attorneys.

In Lay's World, federal prosecutors are motivated by politics, and I'm just part of the vast "media frenzy" that is "perpetuating myths" about a once-great corporation.

When it comes to spinning myths, I'm a piker compared with Lay.

# APPENDIX AY

*Pethouse Pet of the Week*

THE HOUSTON
CHRONICLE

Sunday, July 18, 2004

2 STAR EDITION

Section ZEST, page 5

By Staff, Ken Hoffman

Name: Jeannie

Birthdate: Aug. 1, 2003.

Ethnicity: "I'm a terrier, which is the finest of all breeds. Every dog should be a terrier. The world would be a better place."

Turn-ons: "You know that commercial where Andre Agassi's 'son' wallops tennis balls at pro Taylor Dent? It's not really Agassi's kid. Good commercial, though.

"How could you watch Muhammad Ali shaking with Parkinson's at the All-Star Game and still be against stem-cell research?"

Turn-offs: "Lance Berkman's performance in the Home Run Derby was exciting, but did he really say he was tired in the final round? Tired from what? Swinging a baseball bat 40 times over a whole hour? You want tired? Try working a real job for a living.

"What is it about human nature? I didn't own any Enron stock. I didn't work at Enron. I don't even know anybody who did. But I thoroughly enjoy watching those Enron jerks being led away in handcuffs."

Ideal home: "Jack-in-the-Box has new french fries. These are thicker and 'natural cut,' which means they still have the skin on. Let's see, so far Jack has tried spraying his fries with whey to seal in heat, curly fries, seasoned fries and shoestring fries. And people still prefer McDonald's. But Jack's commercials are better.

"Christine McVie, the former lead singer of Fleetwood Mac, has a solo CD coming out July 27. The CD is titled In the Meantime. I have an advance copy and it's wonderful. The whole thing sounds like when you used to like Fleetwood Mac."

NOTES: Jeannie and other fine pooches are available for adoption at Citizens for Animal Protection, 11925 Katy Freeway (between Kirkwood and Dairy Ashford). The shelter is open 11 a.m.-5:30 p.m. weekdays, 11 a.m.-5 p.m. Saturdays and 1-5 p.m. Sundays. The fee is $ 79, which includes neutering and all shots. Call 281-497-0591 for more information.

# APPENDIX AZ

## *Verdict from Houston residents polled: guilty*

HOUSTON CHRONICLE

July 19, 2004

By Tom Fowler

More than 80 percent of Houston's potential jurors believe indicted Enron executives are guilty, making it impossible for them to receive a fair trial here, according to a survey conducted by attorneys representing several Enron defendants.

Intense media coverage, unfair statements by the government and Enron's economic and symbolic importance to Houston have tainted the jury pool, said the report that was contained in a change of venue motion filed in federal court.

The survey was conducted on behalf of the defendants in the Enron broadband case, but it could just as easily apply to the others awaiting trial, including former Chairman Ken Lay and former Chief Executive Officer Jeff Skilling.

"The continuing prominence of Enron on the news agenda in tandem with the personal experiences of many Houstonians has ensured that Enron is at the forefront of public attention," the motion claims. "The pictures in people's heads about Enron are dominated by images of executives involved in the collapse of the company and subsequent criminal and civil proceedings."

The former Enron executives also claim the jury selection process used by the courts will not be enough to weed out biased jurors, so the trial should be moved out of state or to Corpus Christi.

The change of venue request was hardly unexpected.

Former Chief Financial Officer Andrew Fastow and his wife, Lea, filed requests for changes of venue before they pleaded guilty, using a survey that said close to 60 percent of potential jurors believed he was guilty.

Attorneys for Lay, who was charged in an 11-count indictment Wednesday, indicated they may do the same.

His attorney, Mike Ramsey, said that if he's not permitted by the judge to screen potential jurors to the extent he would like, then he would seek a change of venue.

### Hard to get change

Getting a change of venue is exceptionally difficult, particularly at the federal level, but it does happen.

Richard Murray, director of the University of Houston Center for Public Policy, said research he did similar to that used by the Enron defendants helped move the trial of Oklahoma City bomber Timothy McVeigh to Colorado. However, those were extraordinary circumstances.

"Even with a lot of evidence from surveys, these motions usually fail," Murray said. "The federal rules for including them as evidence can be pretty tough."

The seven former broadband executives have pleaded not guilty to charges of fraud and overselling the business.

One report polled 503 Houston-area jury-eligible people about their opinions of the indicted Enron executives. Another looked at the intensity of local news coverage compared with that nationally and in other cities.

The survey claims 81.4 percent of potential jurors said they thought the former Enron executives accused of misleading the public and profiting off the sale of their own Enron stock were guilty, 7.8 percent said they were not guilty, and 8.7 percent said they did not know.

In Austin, Corpus Christi and Albuquerque, N.M., where the defense team also conducted the survey, the percentages of those who said they were guilty were 71.9 percent, 67.9 percent and 71.1 percent, respectively.

When asked specifically about Skilling, 80 percent of those surveyed said they knew he had been accused of a crime, and 84.5 percent of those who knew that said they believed most of the accused Enron executives were guilty.

### 1. Houston a victim

The defendants also claim that a significant portion of Houston considers itself victimized by Enron's demise.

Of those surveyed, 47.2 percent said they personally knew someone who was harmed by Enron's collapse. And not only did individuals lose jobs, companies lose business and nonprofits lose philanthropic support, but the city was damaged on a symbolic level.

"In short, Enron was a flagship of the Houston economy. It was an icon of Houston success and spirit. But, since an overwhelming percentage of Houston residents think Enron executives are at fault, the collapse of the corporation cannot be viewed by Houston residents simply with sympathy, but with moral indignation as a disloyal act affecting the welfare of the larger community," the filing says.

Murray called the 80-plus percent presumption of guilt in the survey "a big number," but the burden is still on the shoulders of the defense to prove they cannot find an impartial jury among the remaining 20 percent. That could be as many as 600,000 potential jurors.

"The government would likely say that with such a large pool, they could find an objective jury," Murray said.

The comparison between local and national news coverage is an attempt to show that local news consumers were exposed to Enron-related stories much more heavily than others.

Although the report called the Houston Chronicle's coverage "responsible and professional," it did say "coverage of Enron has been, to say the least, massive."

From Jan. 1, 2003, through March 31, 2004, the Chronicle published almost 1,000 stories that contained relevant mentions of Enron, the report claims, or an average of 15 Enron stories per week. This compared with USA Today's average of four such stories per week.

2. Web site cited

The Chronicle's Web site — which has an Enron section with four years of archived stories, dozens of documents, photos, and video and audio clips — was singled out as having "a qualitatively greater potential for the creation of juror bias" because it was " ... more than enough to achieve critical mass to kick off the self-reinforcing firestorm of local interest and concern."

Interactive features like pictures of the defendants with personal and professional biographies, an Enron quiz and an unscientific poll asking if Enron defendants can get a fair hearing in Houston further help influence the jury pool, the filing claims.

Another report compares the frequency and topic of local TV news reports to those of the national reports by ABC News between January 2003 and April 2004. The local stations produced 4,186 Enron-related news reports versus 210 on ABC. Sixty-four percent of the local reports were about Enron executives and their involvement in the collapse versus 44 percent of ABC national reports.

Even if the motion for a change of venue is backed by such detailed information, Murray said the decision still comes down to the most idiosyncratic element of all: the judge.

"Most are pretty reluctant to move the cases, for both logistical and personal reasons," Murray said.

"Moving an entire case to another city is a big inconvenience. And for a trial judge, a case like Enron can be a high point of a career.

"They usually don't want to give them up."

## APPENDIX BA

### *In Re Enron/Skilling*

Transcription of the lyrics from
"Drop the S Off Skilling"

Skilling gonna to find you, rain, sleet or snow,
there's nowhere on earth that you can go.
There's more pipeline boys all across the land,
ready to get you for the Enron scam.

Consider yourself a sacrifice for the pipeline
workers that gave their life maintaining the
lines that made you rich when justice comes
around you gonna get hit.

America N-Run's got a story to tell, how the
judiciary system slowed down like a snail.
Gave those corporate crooks time to plan their
escape, so when I see you, Jeffrey, I won't hesitate.

Y'all know the story, the year 2001, right before
Christmas they must have had fun plotting the
demise of the good citizens and how they spend our
millions and escape punishment.

I'm not the English patient but this much is true,
the bankruptcy policy form in 1542 over in
England
our present system's motherland and since that
time
the crime has crept back in.

The 1800 congress passed the first act it was
simple and plain and that was a fact. A bankrupt
debtor's dishonest, that's that this original law
kept our nation on track.

Economic casualties forced the change of plan
in 1837 the panic swept the land. They started
changing all of the bankruptcy plans, and
continuous changes still foil the scam.

Skilling gonna to find you, rain sleet or snow,
there's nowhere on earth that you can go.
There's more pipeline boys all across the land
ready to get you for the Enron scam.

Consider yourself a sacrifice for the pipeline
workers that gave their life maintaining the
lines that made you rich when justice comes
around you gonna get hit.

Now let me take you down this amendment row
and point out the years to let you know how these
policymakers have let themselves get hosed
while the corporate crooks ride out with the gold.

The 1800 act was repealed in '03 because the
original act was coerced you see, then they let
the states decide and let them to be until 1841
VanBueren's policy.

This act was the same for a couple of years
then back to the states to pay off their peers.
The third act passed in 1867, I don't know who
it helped but I bet they rolled a 7.

They amended this act in '74 after '73 panic
what they panicking for? Repealed again in
1878 cuz of commercial fraud let's set the record
straight, 125 years have passed, the fraud's the
same just the names have changed.

These corporate crooks hide behind their laws,
U.S. citizens this is reason for pause. I mean stop
and take a closer look, don't work your life away to
pay some corporate crook who makes a 100 mill so
he buys the law if you purchase the law you can't
get caught.

That's why them pipeline boys have turned to
street justice, cuz the policymakers have just said
"fuck" "fuck," "fuck it."

Skilling gonna to find you, rain, sleet or snow,
there's nowhere on earth that you can go.
There's more pipeline boys all across the land
ready to get you for the Enron scam.

Consider yourself a sacrifice for the pipeline
workers that gave their life maintaining the
lines that made you rich when justice comes
around you gonna get hit.

Back when I was working at the crooked E,
at best guess Skilling stood 4 foot 3.
He's so damn small I lay him across my knee
and after the spankin' I'll break his teeth.

I recollect the time on the elevator the
punk Jeff Skilling was nervous for sure.
Not a flunkie around to kiss his ass just

this N-Run soldier with a knife and toe tag.
I looked down in his eye and he couldn't speak
when good stares on evil, the evil gets weak.

The perspiration beading all across his head,
he was more than just nervous, the bitch was
scared. The thing that saved his ass was the
elevator opened a sucker walked in saying
"hi Jeff" hopin' this crooked motherfucker would
remember his name in hopes of getting props in
the corporate game.

Skilling stepped off in a goddamn hurry five
seconds more and the bastard gets buried.
Missed opportunities in the deck of cards
now we blasting public with no regard.

The elevator guy that kissed his ass now he's
stolen from you, are you ready to blast?
N-Run's gonna get to the heart of the matter
and we won't give a damn when his blood gets
spattered.

For everybody out there that lost a dime
drop the "S" off of Skilling, it's killing time.

Skilling gonna find you rain, sleet or snow,
there's nowhere on earth that you can go.
There's more pipeline boys all across the land
ready to get you for the Enron scam.

Consider yourself a sacrifice for the pipeline
workers that gave their life maintaining the
lines that made you rich when justice comes
around you're gonna to get hit.

Skilling gonna to find you rain, sleet or snow,
there's nowhere on earth that you can go.
There's more pipeline boys all across the land
ready to get you for the Enron scam.

# APPENDIX BB

## *Up Perry-scope / Governor's approval rating is slightly higher, but his re-election is far from assured. Likely challengers Hutchison and Strayhorn are better regarded.*

THE HOUSTON CHRONICLE

Wednesday, September 8, 2004

Section B, page 8

3 STAR EDITION

By Staff

DESPITE the coarsening of the American vernacular, euphemisms remain much in vogue. People pass away rather than die. Armies don't kill innocent civilians and destroy neighborhoods, they inflict collateral damage. When one performer bares the breast of another at a Super Bowl played in Houston, the result is a "wardrobe malfunction."

In business and politics, when someone is fired or abandons a sinking vessel, he is said to want to spend more time with his family. That was what Jeff Skilling said when he left Enron shortly before its collapse. That is what Gov. Rick Perry's spokeswoman says of departing Chief of Staff Mike Toomey.

Toomey might be leaving the governor's team to return to the highly paid profession of lobbyist. He might have noticed that Perry's ship of state was beginning to take on water and wished to avoid involvement or responsibility.

Regardless of what motivates Toomey's longing for the bosom of his family, Perry's standing with Texans and Republicans is lower than an incumbent seeking re-election would like. Two likely challengers for the GOP nomination, U.S. Sen. Kay Bailey Hutchison and state Comptroller Carol Keeton Strayhorn, gained approval ratings higher than Perry's in a recent poll conducted for Scripps Howard.

Perry's spokeswoman said the governor continues to base his politics on principles rather than polls. Unfortunately, Perry's principles put congressional redistricting over providing a workable system of public education. During a special session on school finance, Perry suggested funding schools with slot machines and fees on topless club patrons.

Perry said Toomey was a "major factor in the successes of the 2003 legislative session." Those successes included the reduction of a $10 billion budget deficit by cutting services for those least able to afford them: the elderly, the sick and children without health insurance.

Bill Hammond, president of the Texas Association of Business, credited Toomey with helping to pass "dramatic tort reform." Although hospitals and some doctors are receiving discounts in their malpractice insurance premiums, health care is less affordable for most Texans than ever.

Now that Toomey has resigned to spend more time with his family, Gov. Perry might improve his standing with voters if he tried harder to improve the well-being of all Texas families.

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# APPENDIX BC

## *Let them stew in Houston*

AUSTIN AMERICAN-STATESMAN (Texas)

Wednesday, November 10,
2004

Section EDITORIAL, page A16

By American-Statesman Staff

Former Enron executive Jeffrey Skilling doesn't want to be tried at the scene of the disaster, so he's resorted to almost comic efforts to move his trial to a more favorable climate than Houston.

Of course Skilling and his attorneys are deadly serious about their 75-page motion to move the trial out of Harris County. Skilling, Enron's former chief executive officer, faces more than 30 criminal counts in federal court, including fraud, conspiracy and insider trading.

As proof of the need to move the trial, Skilling's attorneys cited a survey done by DecisionQuest that found Houston residents connected Skilling's name with various pejoratives. It's not clear from the news accounts how the questions were asked, but the survey said nearly a third of those polled in

Houston associated Skilling's name with words such as pig, snake and economic terrorist.

But that still begs the question whether U.S. District Judge Sim Lake should grant the motion to move the trials of Skilling and former Enron Chairman Kenneth Lay and chief accountant Rick Causey, who are also defendants and joined the motion for a change of venue. According to Skilling's own survey, two-thirds of the Houston population remains as prospective, unbiased jurors.

What the defendants fear is the wrath of people who were harmed by the collapse of Enron after it was found to be a shell game. In Houston, it wasn't just investors who lost their shirts; thousands of employees lost jobs, savings accounts and pension plans, and institutions from the Astros to local charities were left in the lurch when the company failed.

From a legal perspective, it makes sense that Skilling, Lay and Causey would want to be tried in a city where the damage wasn't so great and so personal. But from the standpoint of pure justice, the wealthy executives really should be judged right where their economic hurricane struck with the most force.

The alternative trial sites suggested by Skilling attorney Daniel Petrocelli are suspect, too -- Phoenix, Atlanta and Denver. Folks surveyed there weren't nearly so attuned to the Enron scandal as those in Houston. Causey's lawyer has added New Orleans to the list.

But people in Billings, Mont., Muskogee, Okla., and Des Moines, Iowa, might be less angry still about Enron. Of course, those cities wouldn't have the great restaurants, night life, nearby skiing and other amenities of Denver, Atlanta or New Orleans.

A fair trial is guaranteed everyone in the U.S. Constitution, but a sumptuous lifestyle during trial is not. It seems unfair to the Enron victims to have the disgraced executives living the high life in a top hotel in a great city while on trial for serious crimes. Then there is the expense of ensconcing prosecutors, witnesses and clerks in a fancy hotel with expensive meals for months at the taxpayers' expense.

From here, it looks like another Enron scandal. Plus, there are plenty of venues in Texas to hold a federal trial. Courthouses from Laredo to Tyler would be honored to have Skilling, Lay and company as their guests. And if that doesn't work out, the Enron defendants could always take their chances with the tender mercies of a jury in Travis County.

# APPENDIX BD

## *Skilling seeks escape from Houston heat; Ex-Enron chief files for a change of venue after poll finds unflattering perceptions here*

THE HOUSTON
CHRONICLE

Tuesday, November 09, 2004

3 STAR EDITION

Section A, page 1

By Staff, Mary Flood

Former Enron CEO Jeff Skilling wants his trial moved out of Houston because one-third of area residents polled associated his name with negatives like "pig," "snake," "economic terrorist" and the "financial equivalent of an ax murderer."

Skilling's lawyers filed documents in federal court Monday asking that his case be transferred to a more neutral venue such as Denver or Atlanta.

"As much as he would like to be tried in Houston, the sad reality is that Jeff Skilling cannot get a fair trial there," said Daniel Petrocelli, his lead trial lawyer. "The community has an emotional, sociological, and financial stake in the outcome of the case and has presumed Mr. Skilling to be guilty unless proven innocent."

Skilling's co-defendants - ex-Chairman Ken Lay and former chief accounting officer Rick Causey - joined in the request. It argues there is pervasive anti-Enron prejudice in the Houston area, in part because of the stake this community had in Enron's fortunes and in part because of prejudicial publicity.

Some choice words

In the papers, Skilling's experts argue many Houstonians have not only an emotional stake but a real or perceived economic stake in Enron convictions because fines go back to the victims in this case.

Skilling, who has previously said he wanted the case moved, hired five experts to examine the publicity about Enron, the community's economic interest in the outcome of the trial and other factors. Petrocelli filed a 75-page motion with a box full of reports and exhibits with U.S. District Judge Sim Lake on Monday.

The filings showed that 31.8 percent of Houston area survey respondents used negative descriptions when asked about Skilling. That was about three times the percentage of people in Atlanta, Denver and Phoenix who came up with negative responses when asked about Skilling.

"He is the devil," said one Houston-area respondent.

"Jeff Skilling is an arrogant, conniving, pompous, brilliant crook," said another Texan surveyed by Philip K. Anthony's DecisionQuest firm.

Skilling's lawyers cite "fervent, inflammatory, and demonstrably prejudicial" media coverage of the Enron cases, especially in the Houston Chronicle, as one of the main reasons the case should be moved.

They claim even in-depth questioning of potential jurors about their biases can't eliminate the latent prejudice built up over the years since the company's dramatic fall in 2001.

They compare the far more voluminous coverage here to coverage in Atlanta, Phoenix and Denver, the cities Skilling suggests for his trial.

"Citizens of this venue and the media that serve them have erected metaphoric and psychological divides between the 'evil' executives at Enron and the 'good' people they betrayed," the filing said.

Their polling also showed Houston-area respondents were at least twice as likely to know someone who has been harmed by Enron's fall. About 33 percent of the Houston respondents knew someone affected.

### Publicity also blamed

Lay, who had initially hoped to get a speedy trial in Houston and by himself, said he is forced to join Skilling's motion. His attorney Mike Ramsey argued that the local press has taken leads from prosecutors and "substantially distorted and magnified" such information to an intolerable level.

Enron Task Force Director Andrew Weissmann would not comment on the filings. The government has several weeks to respond, and Judge Lake will likely hear again from the defendants and could even hold a hearing before he rules.

Skilling's request was adopted by Causey, saying he "must reluctantly seek trial elsewhere," and citing Houston Chronicle stories that "make it impossible to impanel a fair and impartial jury." Causey's lawyers Reid Weingarten and Mark Hulkower added New Orleans to the list of cities appropriate for the trial.

Skilling and Causey both face more than 30 charges, including fraud and conspiracy, that allege they manipulated the company's bottom line to fool the stock market and enrich themselves. Lay faces seven counts of fraud and conspiracy and four counts of bank fraud that are scheduled to be tried separately.

All three men have pleaded not guilty.

Pamela Perry, a Miami attorney who has also written about these kinds of motions, said the judge can always start to pick a jury to see if it's possible.

"The attorneys argue their clients aren't seen as individuals anymore. And we try people, not symbols," she said. "Still it's a very high bar to get a case moved - both legally and practically."

Legal experts agreed that when a judge refuses to move a case and is able to pick a presentable jury, there is very little chance of the matter being overturned on appeal.

This is the fourth request for an Enron criminal trial to be moved because of local prejudice.

Five defendants in the broadband division trial, scheduled for March, have also asked that their trial be moved from the Houston area. They also filed voluminous studies and exhibits and U.S. District Judge Vanessa Gilmore has yet to rule.

A moot point for Fastow

Andrew Fastow, the former chief financial officer, asked that his trial be moved. But that request became moot when he pleaded guilty to two charges and began cooperating with the government.

His wife, Lea Fastow, asked that her trial be moved. The judge denied that request but changed his mind after she entered a guilty plea and then withdrew it. The judge moved her trial to Brownsville before she decided again to plead guilty. She is now serving a one-year prison sentence on a tax charge.

The six defendants in the Nigerian barge case, currently in a sentencing phase, did not ask their case be moved. One former Enron executive was acquitted and the other five were found guilty.

TRACKING ENRON ATTITUDES

Residents in four federal court districts were asked questions to gauge potential juror attitudes toward former Enron CEO Jeff Skilling. Roughly 800 were polled in each district.

Q: What words come to mind when you hear the name Jeff Skilling?

Percentage of negative respondents:

Houston: 32 percent (246)

Atlanta: 13 percent (106)

Denver: 11 percent (86)

Phoenix: 9 percent (72)

Q: In your opinion, was the economy of your area affected more by the collapse of Enron than other cities in the U.S.?

Yes:

Houston: 70 percent (539)

Atlanta: 12 percent (96)

Denver: 10 percent (75)

Phoenix: 8 percent (61)

# APPENDIX BE

## *Payback and leverage part of Linda Lay investigation*

THE HOUSTON
CHRONICLE

Wednesday, November 24,

3 STAR EDITION

Section BUSINESS, page 1

By Staff, LOREN STEFFY; Loren Steffy is the Chronicle's business columnist. His commentary appears Sundays, Wednesdays and Fridays. Contact him at loren.steffy@chron.com.

LINDA Lay understands.

She understands that prosecutors are going to scrutinize the sale of Enron stock by her family charity that allegedly occurred minutes before a credit rating downgrade that plunged her husband's company into bankruptcy.

She understands because she told us so, way back in January 2002, during her televised sobfest on the Today show.

She understood, she said then, why everyone was angry with her husband, former Enron Chairman Ken Lay, and why they blamed him for the company's collapse.

"He is at the top," she said. "If I were back there listening to all the things that were being said, I would absolutely have to say that: 'What is wrong here? How can all of this be happening without something - someone doing something terribly evil?' "

How indeed? For the past three years, prosecutors have been trying to find that someone - or someones - and bring them to justice.

Her husband, of course, is one of the prime candidates for someoneship.

Which is why the stock sales by the Linda and Ken Lay Family Foundation caught prosecutors' attention. They're looking for leverage and perhaps a little payback after Ken Lay spent the summer berating them as part of his post-indictment media blitz.

Prosecutors "used" Lea Fastow to extract a plea from her husband, former Chief Financial Officer Andrew Fastow, and now they're "using" Linda Lay to get at her husband, former Chairman Ken Lay.

It's a hardball tactic, but then, Enron was hardball fraud.

From the beginning, Enron prosecutors have approached the case more like an organized crime investigation than a corporate fraud prosecution. Given Enron's tangled web of deals, the myriad of willing co-conspirators, and the sheer pervasiveness of fraud, corruption and self-dealing, the tactic makes sense.

For better, for worse

Consider the involvement of spouses and extended family in the Enron's business. Lea Fastow wasn't just a tax-cheating stay-at-home mom, she had been an assistant treasurer at Enron. She tried to pull her father into one of the partnership deals, and he received a fee for his trouble when it didn't work out. Her father-in-law oversaw a family foundation that was the conduit for Andrew Fastow's illicit gains.

Michael Kopper's domestic partner profited from the partnership deals as well.

Jeff Skilling's wife was the board's corporate secretary. She resigned in 2001, before they got married.

A family affair

Linda Lay herself was a former Enron employee, and Ken Lay's family was hip deep in Enron.

His sister owned part of a travel agency that provided services for the company, generating commissions that one year were almost $ 2 million. And Lay's son, Mark, was an officer in a company Enron used to begin its pulp and paper trading business. He got a three-year contract with Enron paying him a minimum of $ 250,000 a year plus stock options, according to the company's 1998 proxy statement.

All of this was business as usual, so steeped in the sense of entitlement that pervaded Enron's elite that no one questioned or cared whether it was contributing to that "terrible evil" that brought the company down.

Linda Lay said she understood the need to find the source of that evil, so she must understand why prosecutors are snooping around her foundation's stock sale, even as her attorney acts incredulous.

Prosecutors believe "they are anointed by God to do what they please," whimpered Lay defense lawyer Mike Ramsey.

The guy's supposed to be the best legal talent in the country and so far his defense is part Sgt. Shultz - Ken Lay knew nothing - and part Coasters - why's everybody always picking on his clients?

If Linda Lay sold stock on insider information, it's worth a look. As a practical matter, though, insider trading is hard to prove.

On Nov. 28, 2001, Linda Lay allegedly had the foundation sell 500,000 Enron shares for a quick $ 1 million just as rumors were beginning to circulate that Dynegy's proposed acquisition had collapsed.

The Lays personally never received any proceeds from the sale, and the assets of the foundation were distributed to various charities.

Ramsey told my colleague Mary Flood last week that the sales occurred after credit agencies slashed ratings on Enron's debt. Linda Lay was simply trading on public information, he claims.

According to the New York Times, the trades occurred at least 10 minutes before the first rating cuts were announced.

More to come

Even if true, it would be a piddly transgression by Enron standards, but Linda Lay understands why it's getting so much attention. Her husband was at the top, the head joker in the house of cards.

Her tears, the ones already cried on national TV and the ones no doubt yet to come, are a mere puddle compared with the sea of suffering and sorrow her husband and his cronies bestowed on so many others when those cards collapsed.

That's the reason prosecutors are scouring her stock sales as well as her husband's, and why they may even use the threat of prosecution against her to make him heel.

But don't worry. As she already told us, Linda Lay understands.

## APPENDIX BF

### *Opposing Enron legal teams on parallel paths; 'All-star team' of federal prosecutors says merit of cases outweighs hardship*

THE HOUSTON
CHRONICLE

Sunday, December 19, 2004

2 STAR EDITION

Section BUSINESS, page 1

By Staff, Mary Flood

The team of prosecutors that won five convictions here in the first Enron criminal trial said the ridiculous hours, family separation and taxing complexity were worth it. That's a good thing because there's a lot more to come in 2005.

"To parrot the commercial - traveling away from your family for months? Disaster. Staying up all night working on briefs? Tiring. The ability to stand before a Houston jury in the first Enron trial and say this case is about the integrity of our public markets? Priceless," said Matt Friedrich, 38, one of three trial prosecutors in the Nigerian barge case. The two-month trial that ended in

November with five convictions and one acquittal was the first case involving Enron executives and is the prelude to the longer Enron trials likely to take place here in 2005.

The trial of five former members of Enron's Internet division is set to start April 1 and could last three to four months, while the trial of ex-chieftans Ken Lay and Jeff Skilling will likely take longer and is expected to be scheduled for 2005 as well.

Enron Task Force Director Andrew Weissmann, a 46-year-old prosecutor loaned to this investigation from a New York office three years ago, and two of his prosecutors sat down in Washington, D.C., recently for a conversation with the Chronicle.

'Company on steroids'

"The barge case was a microcosm of all Enron cases. It's about a company on steroids, artificially enhanced with side deals and other methods, appearing to be something it wasn't. But unlike steroids in the sports world, there are many, many more victims here," Weissmann said. He said it's an enormous challenge for the prosecutors who need to "be on all four burners constantly."

He credits his barge case trial team of three prosecutors with creating such a potent case that it made the defense attorneys look lost at times. A defense attorney who watched the case agrees that "prosecutors tried a smart case. They honed it down to the bare minimum precluding some possible defenses."

Of the one acquittal, ex-Enron accountant Sheila Kahanek, Weissmann said, "Obviously we thought that person was guilty and that we could prove it beyond a reasonable doubt. At the same time, we thought the jury was smart, fair and extremely attentive."

Getting colleagues to turn

Weissmann came to the Enron case after supervising more than 100 attorneys in the Brooklyn U.S. attorney's office and after trying several high-profile organized crime cases, including those involving Vincent "The Chin" Gigante and high-ranking members of the Colombo and Gambino crime families.

He said there are some similarities between mob and Enron cases, particularly the challenge in getting people to admit wrongdoing and turn against others.

He said the basic cordiality in the courtroom in the barge case and the mob cases is the same, though, noting one mobster always said good morning to him.

"His attitude was, 'You do your job; I do mine.' Unfortunately his job was whacking people," Weissmann said.

The barge trial prosecutorial team included Friedrich, from a Virginia office, Kathryn Ruemmler, from a Washington, D.C., office and John Hemann, from the San Francisco office. Hemann is leaving the team, as have several others before him after putting in a year or two of traveling to Houston, where many witnesses live, and Washington, where the task force is based.

Ruemmler and Friedrich, who also tried the Arthur Andersen obstruction case in 2002 with Weissmann, will now both work on the prosecution of Lay, Skilling and ex-Chief Accounting Officer Rick Causey.

Knowing the local terrain

Friedrich attended law school at the University of Texas and clerked and worked in Texas as a prosecutor before going to a Virginia office. He knew the local cultural terrain well enough to teach his fellow prosecutors how to suck crawfish at a local Cajun spot.

He's had previous task force experience with a national campaign fraud task force, his wife is also a prosecutor, and his daughter was born between the Andersen and barge trials.

Friedrich said the complexity of the Enron cases appeals to him, as does the challenge of weaving an explanation of financial markets into the case.

"It's a case that is more sophisticated than saying the money was here and it went into the defendant's pocket," Friedrich said. "This requires a level of commitment and understanding to portray to a jury, to make them understand why it's a crime."

"The jury has to understand a lot of predicate facts such as the whole public reporting system - why does it matter that companies report earnings, how does Wall Street follow what companies report, why does that matter to investors and why that would all that create an incentive for these defendants to do something false in terms of the books?" Friedrich said.

Being on task force a luxury

Ruemmler, 33, was working out of the Washington office.

Before becoming a prosecutor, she represented corporate clients in criminal defense cases and served as associate counsel to the president of the United States in 2000 and 2001.

Ruemmler said working on the task force has been a luxury, in that it focuses on one set of cases, and a challenge because of the complexity.

But she noted it's also been physically exhausting, most of the team got sick at some point, and it was seldom the team had time to take a run around Memorial Park or attend a baseball game.

Before coming to the Enron case, she was involved in violent crime prosecutions in Washington and last tried a three-person conspiracy to commit an armed carjacking.

"Defendants and suspects understand that if you're selling drugs or if you rob somebody or if you take their car, that that was wrong. The question becomes who did it," Ruemmler said.

"But the issue we face first in Enron is, was this conduct criminal? When dealing with violent crime cases or even narcotics cases, that's never a question. That's always very, very black and white.

Here we have to spend a lot of time figuring out what was done and figuring out whether that was a violation of the criminal law."

No shortage of applicants

Christopher Wray, assistant attorney general heading the criminal division of the Justice Department, said he's pleased with the quality of cases and speed that the Enron Task Force has brought them. He calls them an "all-star team."

"The prosecutors are among the very best from around the country," Wray said. "When we need somebody, there is no shortage of top-notch applicants. People always have to juggle personal lives to do this. But there's a great level of excitement on these cases."

# APPENDIX BG

## *The few, the brave want to be in Enron jury pool*

THE HOUSTON CHRONICLE
Feb. 28, 2005

By Mary Flood

You know the jokes about people who call to get out of jury duty? Well, what about someone who calls the courthouse and volunteers?

David Bradley, chief deputy U.S. clerk, said that after the Houston Chronicle ran a small story last week headlined "Want to be Enron juror? Answer this," the clerk's office got "less than a half dozen calls" from people volunteering to sit through an expected three-month trial of five Enron Internet division executives.

"People wanted to know how they could be on the Enron jury," Bradley said. "I've never had that happen before."

He thinks the newspaper story inexplicably confused these few callers into thinking it was volunteers who would be given the 11-page questionnaire in preparation to root out bias before the April 1 Enron case in U.S. District Judge Vanessa Gilmore's court.

"They had to have just read the headline and not the story to think we wanted volunteers," Bradley said.

But the callers also did have to figure out how to call the clerk's office, which shows more initiative than skipping the 4-inch story.

Bradley said the inquirers were turned away and the questionnaire was mailed out to 400 prospective jurors from whom the actual 12 jurors will be chosen.

# APPENDIX BH

## *Enron movie to have River Oaks premiere*

THE HOUSTON CHRONICLE

March 22, 2005

By Mary Flood

The Enron documentary will have an invitation-only local premiere on April 20 at River Oaks Theatre, just a mile or so from the homes of its troubled two former top executives.

The film, *Enron: The Smartest Guys in the Room*, which has already been shown at film festivals, will be available to all Houston moviegoers April 22 and in the other top 20 markets around the country a week or so later.

"I think it's important to have the premiere in Houston for the most obvious reason: Houston served as the headquarters of Enron and was the city most affected by the company's rise and fall," said Alex Gibney, the film's Grammy and Emmy-winning director, producer and writer.

Of all the characters in the complex dramatic debacle, this 110-minute film focuses most heavily on two River Oaks-area denizens, ex-Chairman Ken Lay and ex-CEO Jeff Skilling.

Both men have pleaded not guilty to multiple felony charges in connection with the company's death spiral and are scheduled to be tried in January.

"In Houston, sure there might be some burnout on Enron," said Landmark Theatres' Houston manager Rob Arcos.

"But the film offers an objective view of what happened ... and in under two hours," Arcos said.

The movie, which was well received at the Sundance Film Festival in January, features many Houstonians, shots of downtown, and even a surprisingly beautiful night scene over East Texas oil refineries.

Although there's plenty of Texas, it also spends a lot of time in California, in part because of the delicious audio tapes of traders cashing in on the state's energy crisis.

The film is based on the book of the same name by Fortune magazine writers Bethany McLean and Peter Elkind, who appear in the movie.

# APPENDIX BI

## *Movie review - 'Enron: the smartest guys in the room' Those You Love to Hate: A Look at the Mighty Laid Low*

April 22, 2005

By A.O. Scott

If you are looking for a good dose of outrage at a theater near you, you won't find a better bargain than "Enron: The Smartest Guys in the Room," a new documentary directed by Alex Gibney. Documentaries have recently been making up for a shortfall in genuine movie heroes - those plucky child orthographers in "Spellbound" and the gritty wheelchair jocks of "Murderball" come to mind - and Mr. Gibney's film is the latest evidence that nonfiction cinema can supply worthy, hissable villains as well.

Anyone who might be in the jury pool for the coming trials of Kenneth L. Lay and Jeffrey K. Skilling, the top Enron executives who have yet to face justice, should probably stay away, since the movie makes the case against them with prosecutorial vigor. Based on the best-selling book by the Fortune magazine reporters Bethany McLean and Peter Elkind, "Enron" is a tight, fascinating chronicle of arrogance and greed. Interweaving Peter Coyote's sober, ever-so-slightly sarcastic voice-over narration with interviews and video clips (as well as one ill-advised and unnecessary re-enactment) and accompanied by an anthology of well-chosen pop songs, it manages to be both informative and entertaining.

Much of the entertainment value comes from the undeniable pleasure of feeling morally superior to many of the people on screen, a nice antidote to the envy they might have inspired when they were riding high. Mr. Gibney uses video from Congressional hearings and financial chat-show appearances to damning effect; in the era before CSPAN and CNBC, the case against Enron might have been much harder to make.

He has also obtained in-house video from company meetings, in which Mr. Skilling and Mr. Lay, in their very different styles, strut and brag through the company's boom years. Mr. Lay is a bit like a classic Texas football coach - gruff, tough but also possessing a measure of courtly charm. Mr. Skilling is more tightly wound, supremely confident of his intellect and abilities, with a chillier demeanor than his boss. When their enterprise starts to collapse, Mr. Skilling, expressing no remorse and accepting no responsibility, abruptly quits. Mr. Lay, rallying his troops, indulges in one of the most dismaying appropriations of the Sept. 11 attacks ever recorded, declaring to employees in the autumn of 2001 that, just like America, Enron is under attack.

Among its tormentors were members of Congress from both parties, and also Mr. Elkind and Ms. McLean, who had the temerity, in the spring of 2001, to write a gently skeptical article called "Is Enron Overvalued?" What eventually became clear was that the company had been concocting value out of thin air, thanks not to the trading strategies it promoted as visionary but to financial games that turned a once-solid natural-gas distributor into the most notorious debacle in the era of corporate scandals. At times, the movie's explanation of Enron's business practices is hard to follow - and the practices themselves seem to have been deliberately made complex to the point of opacity - but the gist is clear enough.

When boilerplate fails, many of the film's interview subjects resort to metaphor. The Titanic comes up more than once. Jonestown, the Lusitania and earthquakes are also mentioned. A Houston minister whose congregation includes many former Enron employees likens the company to "a house of cards built over a pool of gasoline." Appropriately enough, Mr. Gibney's quick, fluid editing gives his film the suspenseful, queasy fascination of a disaster flick, even - or perhaps especially - because you know exactly where it's headed. As the story moves forward, keep your eye on the bottom of the screen, where the stock price is periodically shown. Watch it soar, and then watch it plummet.

Of course, the consequences of Enron's foray into funny money were quite serious, and "Enron: The Smartest Guys in the Room" does not forget the real costs of this catastrophe. While it notes the friendship between Mr. Lay and the Bush family, and details Enron's role in the California energy crisis and the political destruction of Gray Davis, the film is for the most part too journalistically scrupulous to indulge in anything that might smack of conspiracy theorizing.

Which is not to say that its scope is narrow or the implications of its story confined to one reckless Texas company. While the audience's contempt for Mr. Lay and Mr. Skilling feels good and is duly earned, Mr. Gibney does not encourage undue smugness. Without spelling too much out, "Enron" suggests a widespread moral deficit underlying Enron's eventual bankruptcy. Accountants held no one to account, governments abandoned their regulatory functions, the media turned cheaters into stars and a culture of self-righteous mendacity was allowed to flourish as long as the stock prices were high.

The smart guys at Enron were clever - and amoral - enough to profit from those circumstances. In all likelihood, they regard themselves as scapegoats, even as the public views them as villains. It's not impossible that they are, to some extent, both.

Opens today in New York and Houston.

Directed by Alex Gibney; written by Mr. Gibney, based on the book "The Smartest Guys in the Room" by Bethany McLean and Peter Elkind; director of photography, Maryse Alberti; edited by Alison Ellwood; music by Matt Hauser; narrated by Peter Coyote; produced by Mr. Gibney, Jason Kliot and Susan Motamed; released by Magnolia Pictures. Running time: 110 minutes. This film is not rated.

## APPENDIX BJ

### *Enron workers' money put on Hold for bosses' appeal*

THE HOUSTON CHRONICLE

June 24, 2005

By Mary Flood

Enron employees who lost their pensions will have to wait longer to get any of an $85 million settlement because two ex-bosses and a bank that worked on their pensions have appealed.

This week former Enron Chairman Ken Lay, former Enron CEO Jeff Skilling and Northern Trust Co. asked a federal appeals court to hear their complaints about being kept out of this settlement.

U.S. District Judge Melinda Harmon approved the deal, which uses two Enron insurance policies to pay the workers. Without an appeal, workers could have been paid in a matter of months.

The $85 million-plus settlement is no windfall. About $17 million is set aside for lawyers. The $69 million left amounts to about $3,500 per person spread out over 20,000 workers. The actual division could differ.

"We'd anticipated the appeals would be filed but certainly hoped they would not, as it further delays the distribution to the employees," said Robin Harrison, one of the lawyers for the workers.

Lay and Skilling tried to stop this settlement before, because they were covered under the insurance but were excluded from the settlement.

# APPENDIX BK

## *The lawsuits stem from complaints that Enron executives and others breached their duty owed to employees under pension laws. Task force needs to refocus after wishy-washy verdict*

2005 Houston Chronicle

July 21, 2005

By Loren Steffy

Justice, the saying goes, is blind. Sometimes she's mute, too. After four days of deliberating, the jury in the Enron Broadband trial delivered a verdict that neither convicts nor clears the five defendants.

The nondecision leaves prosecutors with a difficult choice: try again or punt.

Trying again might seem the obvious choice given that the broadband unit was at the center of some of Enron's most aggressive accounting fantasies.

But another trial would ignore the legal reality the prosecution faces. U.S. District Judge Vanessa Gilmore set a pretrial conference in September to discuss the possibility of another trial. September is just a few months before The Big One, the trial of Enron's former top triumvirate of Ken Lay, Jeff Skilling and Rick Causey.

Wednesday's wishy-washy verdict could be a big distraction. The momentum the task force hoped to gain from the broadband case is lost, and the defense is likely to be emboldened.

As it stands now, Wednesday's jury decision raises more questions than it answers. Why did jurors deadlock on 168 counts, and why was Gilmore so quick to declare a mistrial on those decisions?

After all, fallen HealthSouth CEO Richard Scrushy was acquitted after a jury deliberated for 21 days, and for part of that time, that jury, too, claimed to be deadlocked.

Gilmore, though, was convinced that after four days this jury was going nowhere. We won't know the reasons because she issued a gag order preventing the jury from discussing the case — one more obfuscation in a trial that attempted to unravel a knotted mass of lies.

Given the non-resolution that the public received this week — justice wasn't so much served as sidestepped — it leaves the Justice Department to choose between pride and practicality.

### A few victories

In some ways, prosecutors already have gotten what they needed out of the broadband case.

Ken Rice, the co-CEO of the ephemeral broadband division, pleaded guilty last year to securities fraud and faces 10 years in prison and a $1 million fine. A close associate of Skilling, Rice's testimony may be crucial in the big trial. Kevin Hannon, the broadband unit's chief operating officer, pleaded guilty to conspiracy to commit fraud.

A third top executive, former co-CEO Joe Hirko, didn't strike a deal. In Wednesday's verdict, the jury found him not guilty on some insider trading and money laundering charges, but reached no decision on charges of fraud and conspiracy.

Rather than take the two plea deals and focus on the Lay-Skilling-Causey case, prosecutors set out to try the broadband gang. It's a mishmash of defendants, from Hirko to an accounting director.

### Big charade

It's understandable why prosecutors pursued the case. Of all the games being played by Enron, broadband was one of the biggest charades.

It sold its fiber network among Enron-linked partnerships, driving up the value of assets and booking it as profit.

It received what amounted to a loan from Blockbuster for a movie distribution deal, called it profit, and used it to tout a business that, for all practical purposes, never existed.

### Overblown claims

In an magazine interview in 2001, Skilling claimed the broadband unit was worth $40 a share, which would have given it a value of $36 billion at the time. Never mind that the rest of the industry was imploding.

While much of the broadband gang's shenanigans defy common sense, it's another matter to prove that they committed crimes.

To parse the pretense, jurors first had to endure days of highly technical geek babble. It's thick stuff, and in a legal sense, it's enough to sow reasonable doubt.

### Moot points

Were the broadband defendants criminals? Not in some cases, according to the jury. In others, it remains an open question. Were they drawn into a larger scheme? Perhaps. In the end, it really doesn't matter.

What matters is what comes next. From the beginning, the Enron prosecution has had one true measure of success: Lay and Skilling in a cold steel cage.

Now, as it prepares for its defining moment, the task force is left holding a losing hand. When the September hearing rolls around, the task force needs to tuck its pride under its arm and walk away.

The real trial, the true measure of justice in the Enron saga, begins in January.

Let the small fry swim free if need be. We've got bigger fish in need of frying.

# APPENDIX BL

## *Enron trial can become media love-in*

THE HOUSTON CHRONICLE

August 23, 2005

By Loren Steffy

My fellow reporters, I want to take a few moments to tell you about a fantastic opportunity.

You are cordially invited to spend several weeks or possibly months at the Houston Media Resort & Enron Trial. This incredible limited-time offer is available only to members of the working press.

Forget the drudgery of listening day after day to mind-numbing testimony under dull fluorescence of the courtroom lights. Our friends at the Greater Houston Partnership, the Convention & Visitors Bureau and in local government are eager to make your trial coverage an enjoyable and memorable experience!

Several weeks ago, they held a brainstorming session to consider how to deal with the media onslaught for the trial of former Enron executives Ken Lay, Jeff Skilling and Rick Causey in January.

### More options

According to minutes of the meeting, here are some of the options considered to make your stay more enjoyable:

Relax in the comfortable surroundings of a climate-controlled media room just a few blocks from the courthouse. Food and beverages could be provided, but please , there'd be no need to feel prostituted.

When you arrive at the courthouse, you could glide into your reserved parking area. No more worries about skipping town with unpaid parking tickets.

Need some background for your stories? No problem! The committee discussed a full-service Web site, complete with useful factoids about Houston and its greatest corporate scandal. Leave those news clips at home! Save those Nexis fees for another time! The Web site would have all you need to flesh out your trial coverage.

For my friends in broadcast, the committee suggested free video footage of Houston hot spots.

And what about sidebars? Well, the committee was on top of that, too. You'd simply click on the Web site's "storyboard" for a slew of refreshing and interesting story ideas.

During those lengthy recesses and jury

deliberations, don't slink back to your hotel rooms. You could enjoy other Enron-related activities the committee would put together. Attend a town hall meeting, for example, with a discussion of ethics and lessons learned. Real actual former Enron employees would be on hand to round out the experience.

While we're at it, the committee might want to consider a bus tour of the homes of fallen Enron executives. Stop by the Huntingdon and cast your eyes upon Ken Lay's penthouse aerie. Or tour the tree-lined streets of South Hampton Place, namesake of one of Enron's most notorious off-the-books partnerships. See the downtown prison where Lea Fastow recently completed her incarceration.

### A cynical bunch

Yes, we'd like to make your stay in Houston as comfortable as possible. Judge Sim Lake even cooperated by scheduling the trial for January, in the middle of the not-quite-so-summer season.

But I know you guys. You're a cynical bunch. You've been cast out of your Eastern establishment, sent here to Not New York for what feels like banishment. You'll be cranky.

You'll remember other colleagues who referred to Houston as a "hellhole" and you'll write about how big the bugs are and how the last time you were here, Janet Jackson exposed herself to the world.

That's why the committee wants to do its best to tell "the other side of the Enron story," to show that there's more to Houston than corporate scandal and humidity.

According to the minutes, the committee even discussed a little "covert hospitality" that would include briefing hotel managers on how to answer questions in a "constructive manner."

## 'Undue influence'

The committee members don't know you like I know you, though. They don't know the tedium of spending weeks on the road following a megatrial as it plods toward a verdict. They don't understand the demands of faraway editors who want answers to questions such as "Is Enron still a big story in Houston?" and "How has the city dealt with the stigma of scandal?"

Here, we would laugh except that we know to you, those questions seem serious.

The media circus once again has Houston on its calendar, and once again our time in the Big Top of national scrutiny is enmeshed in scandal.

So our civic leaders want to be prepared. They recognize, as noted at the meeting, that they're walking a "fine line between hospitality and undue influence," but they're willing to try.

So come on down, O Great Media Horde. Please let us know if there's anything we can do to make your time in Houston more pleasant.

And have a heapin' helping of our covert hospitality.

# APPENDIX BM

*How the meaning of 'Enron' has changed*

Friday, November 18, 2005

By Dave Fehling/11 News

For many of those caught in the collapse, life has been rough after Enron.

In one of the biggest corporate crime cases ever, Enron fell far so fast.

Enron. It wasn't so many years ago the very name itself was the pride of corporate Houston. But now, it has become a verb, meaning doing business in a corrupt or unfair way. As in, I've been Enroned by my company.

Its legacy? Just talk to students majoring in business and law.

"Scandal," one student said.

"They're scandalous," said another.

"Ha, disaster," another student said with a laugh.

"Inflated stock prices. Many of my friends losing their jobs at the time," a student said.

Three years ago, one of Enron's bosses told Congress they did nothing illegal.

"We believed fiercely in what we were doing," Jeff Skilling told Congress.

But the feds chose not to believe them. And two months from now, they'll be putting Enron's top brass on trial at the federal courthouse in downtown Houston.

You'll see nationally known lawyers like LA's Daniel Petrocelli defending Jeff Skilling. One of Houston's best, Michael Ramsey, will defend Ken Lay.

Their defense in a nutshell: this guy, Andrew Fastow, orchestrated the fraud to enrich himself, all the while keeping his scheme secret from his bosses.

Will the jury believe it?

"God only knows," said Angelina Lorio, who definitely doesn't believe it. "And there's no way in hell you can tell me he didn't know what was going on inside Enron."

'He' being Ken Lay who she said she admired for much of the 28 years she worked for Enron. She had invested most all her retirement savings in the company's stock, believing it was a good investment because her bosses said so.

And besides, "The stock kept going up and up and up, it was unbelievable," she said.

At one point, she had $500,000 in Enron stock, only to lose it all when the company collapsed four years ago next month.

She had to sell her home and now lives in a small apartment.

And finding a new job at age 60 hasn't been easy for her. "People want young blood," she said.

She feels the little people are paying the price for Enron's collapse while the big guys are "still millionaires," Lorio added.

Reporter: "Have you by chance seen this house before?" Lorio: "No, this is the first time. He lives exquisitely, that's for sure."

According to the tax office, Jeff Skilling's River Oaks house is worth over $5 million.

"It's upsetting and angering," Lorio said.

Neither Skilling nor Lay would sit down with 11 News, but Phillip Hilder did. He said despite appearances he thinks, "their [Skilling and Lay] life is probably tortuous right now."

Hilder is a former federal prosecutor who has defended accused white-collar crooks.

"The pressures of being under indictment and having to defend yourself are enormous," he said.

You can argue about who has suffered most from the fallout of Enron's collapse. But come this January, what had been the company's towers -- so prominent on the city's skyline -- will again be reminding the nation what it means to get Enroned.

The Enron trial is expected to last as long as six months. And don't be surprised if you get a questionnaire in the mail from the federal court as jury selection nears.

# APPENDIX BN

## *Rewriting Acts I, II of Enron just a bit*

THE HOUSTON CHRONICLE

Dec. 14, 2005

By Loren Steffy

OK, quiet, everyone! Places!

Let's get this right, people. We only have a month before the big show, and we have to make this dress rehearsal count.

Remember, Ken, you're speaking to the Houston Forum. It's a dignified audience. You used to be a part of it. These are your peeps, so play to the crowd.

Now, in the first scene, Ken, you enter through the back door and take your place on the dais. You'll be introduced as "Dr. Lay." Linda, you're at this first table. Sympathetic friends near the front.

Cue the media horde to file in at the back of the room. TV cameras ready? Cue the lights, and — action!

"Contrary to popular belief today, I firmly believe that Enron was a great company."

Great, good start, Ken. Now build slow. Talk about the history of the company, about how much money it made and its rapid growth and how back in the day Enron was the "Google of the natural gas industry."

Then build to the collapse. You know, the "run on the bank" stuff and the terrible tragedy of it all.

"The negative effects of the bankruptcy and scandal that the Enron employees and retirees have had to endure is the most devastating and heartbreaking tragedy of my life and will most assuredly continue to haunt me until my death."

Beautiful! Pull my heartstrings, baby.

### Placing the blame

Now, skewer Andrew Fastow. The former chief financial officer is to blame for it all, of course. We trusted him, he crossed the line, that sort of thing.

Good, good. That's working. Now let's complain about the collapse of Arthur Andersen and lay it at the feet of overzealous prosecutors. Let's build the attack here. Get crazy. Call for an investigation of the Justice Department.

"Does the U.S. Justice Department or anyone else in our federal government feel any need to find out how and why this happened, and whether anyone should be held personally accountable and responsible?"

Perfect, Kenny Boy! Turn the table and point the finger. I'm buying it.

Now keep going. The prosecutors are on a witch hunt.

"The Enron Task Force investigation is largely a case about normal business activities typically engaged in on a daily basis by corporate officers of publicly held companies throughout the country."

That's good, baby. Everybody's doing it. I love it. Now, in this next part, you need to whine, but not too much. Play for pity. The government is blocking all the potential defense witnesses. They're stifling the truth, that sort of thing. Former employees, fearing indictment, are too scared to help.

"This has caused virtually all of them to refuse to talk with our lawyers and will almost certainly cause any of those that are subpoenaed by us to testify to assert their Fifth Amendment rights. ... The prosecutor becomes a human guillotine when given the power to charge an individual ... "

### Absolute poetry

Beautiful! "Human guillotine — that's poetry, baby. OK, now throw in a reference to Winston Churchill, and we're ready to build to the big finale. This is it. This is where you reach out to all the scattered Enronians and call them back to the fold. Make it big, baby. The cameras are rolling, the world is watching.

"It will only take a few brave individuals who are willing to stand up and say it's time for the truth to come out. Either we proclaim the truth about Enron and its employees in this trial, or our friends, neighbors, potential employers and others will continue to believe that Enron was a criminal enterprise. ... If we don't speak out, don't testify to the truth, don't let the light shine in, we will live the rest of our lives under this cloud — a cloud that covers all the good works and deeds that each of us accomplished."

Cue the patriotic music.

"Either we stand up now and prove that Enron was a real company, a substantial company, an honest company ... or we will leave this horrific legacy shaped by others for someone else to sort out."

Oh, Kenny, that's pure gold, baby. I'm tearing up. I mean it, I'm feeling it. We're all in this together. It's not just you on trial, but everyone who worked at Enron, vicariously prosecuted through you. You're a genius.

Cue the lackluster applause. Cue the disgruntled audience members leaving early.

OK, now, don't leave too fast, Ken. Linger amongst the crowd, shake hands, wave to a few familiar faces. Linda, a few hugs would be good.

Stroll toward the door, and then, Ken, you slip out the back, just as you came in.

Bravo! Bravo! That's a wrap.

Beautiful, Kenny Boy! You're a natural. The jury's gonna love ya, baby, just love ya.

# APPENDIX BO

## *Lay's side of the story / Former Enron chairman's speech long on self-pity and short on accountability.*

THE HOUSTON CHRONICLE

Friday, December 16, 2006

3 STAR EDITION

Section B, page 10

By Staff

THE timing of Ken Lay's speech to the Houston Forum this week brought memories of a bleaker Houston Christmas season four years ago, when thousands of his Enron employees found themselves suddenly jobless and bereft of pensions and company investments in the wake of the corporation's collapse into bankruptcy. Right up to the end, Lay had bullishly assured them and business analysts that the company was in fine shape and its stock a great buy.

Lay faces trial next month on charges of conspiracy and fraud, along with former Enron CEO Jeff Skilling and chief accounting officer Rick Causey. In his latest public pronouncement, Lay wistfully clung to the discredited image of Enron as a "real company, an honest company, a company that had vision and values." By Lay's account, the undoing of his corporation and his subsequent legal predicament were caused by a dishonest chief financial officer, Andrew Fastow, and a reckless band of federal prosecutors promulgating "a wave of terror."

That isn't the version of the Enron scandal that has been reported in detail by business journalists and company insiders since the bankruptcy. Enron's corporate culture and business model are depicted as fatally flawed and its accounting methods misleading. Enron traders gleefully manipulated the supply of natural gas to California, causing or aggravating power shortages. Lay was chairman and on the corporate board when many of the infamous special entity partnerships and controversial bookkeeping measures were approved.

Perhaps the most distasteful aspect of Lay's speech was his repeated portrayal of himself as a martyr persecuted by the federal government, a man guilty of nothing more than ignorance of what was going on inside his own company. Lay took responsibility for Enron's rise and fall but made only a passing reference to the damage inflicted on thousands of employees. Lay called on them to rally to his defense, creating "a wave of truth."

Post-speech comments on the Houston Forum chat line had a high acidic content. "These are the same people who put their trust in Messrs. Lay, Skilling and Fastow and then were hit by a bulldozer," wrote one respondent. "These are the same employees that they want to come forward and save them from prison. I do not think so!"

Another commented that it was astonishing a corporate head "could expect anyone to believe he was totally ignorant of what his CFO was doing."

A Houston jury will have the task of determining whether Lay bears any criminal responsibility for what transpired on his watch at Enron. If he turns out to have been as clueless about what was going on as he claims, then at minimum Lay is guilty of being grossly overcompensated for his services over the years.

# APPENDIX BP

## *Ex-Enron Official Pleads Guilty*

By Matthew Goldstein, The Street.com

The prosecutorial noose just got a little tighter around Kenneth Lay and Jeff Skilling.

Richard Causey, the former chief accounting officer for Enron, pleaded guilty to one count of securities fraud and agreed to cooperate with the ongoing investigation. Causey, who is facing up to seven years in prison and agreed to forfeit $1.25 million, pleaded guilty in a Houston federal courtroom.

Causey is expected to testify against Lay, Enron's former chairman, and Skilling, Enron's former president, at their upcoming criminal trial. Some legal experts say Causey could prove to be a more damaging witness than former Enron CFO Andrew Fastow because he was closer to both Lay and Skilling.

In his plea agreement, Causey said he "conspired with members of Enron's senior management to make false and misleading statements" about Enron's true financial situation in order to inflate the company's stock.

Causey was scheduled to go on trial with Skilling and Lay next month. It's likely the trial, which will take place in a Houston federal courtroom, will delayed a few weeks to give the defendants' lawyers time to consider the impact of the Causey plea.

In an earlier indictment, prosecutors charged that both Skilling and Causey knew by the fourth quarter of 1999 that Enron was not meeting its budget targets and that the company only appeared to be profitable because of the many schemes they and others concocted to juice reported earnings. The two men specifically were accused of concealing large losses in two of the company's divisions: Enron Broadband Services and Enron Energy Services.

Causey, in pleading guilty, admitted to doing much of what the government alleged, specifically with regard to Enron Energy Services, or EES.

"I and others in senior management made a decision to move the risk management function of EES into another business unit," Causey said in his plea agreement. "This reorganization allowed us to avoid reporting the losses in EES's results so that I and others in senior management could continue to tout EES as a growing and successful business."

In earlier criminal proceedings, prosecutors alleged that Causey was privy to a secret side deal between Enron and the infamous LJM2 partnership, which was used to move billions of dollars of Enron debt off the company's balance sheet. The arrangement, called the "global galactic agreement," guaranteed that LJM2 would never lose money in its dealing with the former energy trading giant.

LJM2 was the brainchild of Fastow and raised nearly $500 million from a long list of wealthy investors, including a number of Wall Street firms.

# APPENDIX BQ

## *Causey pleads guilty, leaving just Skilling, Lay*

THE HOUSTON CHRONICLE

Dec. 28, 2005

By Tom Fowler and John C. Roper

Prosecutors are expected to gain valuable ammunition in their case against Enron's former top two officials from ex-Chief Accounting Officer Richard Causey's guilty plea this afternoon.

Causey pleaded guilty to securities fraud during a re-arraignment hearing before Judge Sim Lake today. The plea deal calls for a sentence of seven years in prison that could be reduced to five years if he cooperates "fully" with the government. He also agreed to forfeit $1.25 million.

Such cooperation includes debriefing prosecutors on events that led to the company's collapse.

The charge Causey pleaded guilty to normally carries a sentence of up to 10 years. Causey's attorney said he was also working on a settlement agreement with the Securities and Exchange Commission. April 21 was set as a tentative sentencing date for Causey.

Causey was scheduled to go to trial Jan. 17 along with former Chairman Ken Lay and former CEO Jeff Skilling. All three men previously have pleaded not guilty to charges ranging from fraud to conspiracy related to schemes that led to the company's 2001 bankruptcy.

"Today Rick Causey, a very decent, honorable man, began the process of putting behind him the unfortunate Enron episode," said Reid Weingarten, Causey's attorney. "All the while and for every day of the remainder of his life he will regret the damage and the hurt that so many people suffered as a resuilt of this tragedy. Mr. Causey would also like to thank all of his family members, his Enron family members and his friends who have been so supportive in this very very long ordeal."

Weingarten added: "Mr. Causey signed a plea agreement, not a cooperation agreement. I'm sure many of you understand the significance of that. What is true to the extent that he has any involvement in any upcoming legal proceedings, he will do one thing: He will tell the truth, because that is who he is, that is what he should do, and that is what he is going to do."

Lay and Skilling weren't in the courtroom for the proceedings but their attorneys were present. Judge Lake agreed to delay the start of the Skilling-Lay trial; jury selection will begin at 9 a.m. on Jan. 30.

Lawyers for Skilling and Lay talked about Causey's decision.

"Rick Causey did this for one reason only and that was to protect his family," said Daniel Petrocelli, Skilling's attorney.

Ramsey, Lay's attorney, called it "a tragic day," saying Causey was innocent and forced into agreeing to the plea.

"Here he is pleading guilty to something that in my mind may not be a crime at all," Ramsey said.

Petrocelli called Causey a good, honest family man who did nothing wrong. Said Petrocelli: ``There was no criminal activity at Enron other than by Andy Fastow and a handful of others."

The former chief accounting officer lacked the status and salaries of his two co-defendants, but the plea deal will likely make him valuable to the government's case.

Like former Chief Financial Officer Andrew Fastow, who agreed to cooperate with the government in 2004, he has intimate knowledge of the company, particularly in its last days before it filed for bankruptcy.

Causey, 45, was responsible for the company's public accounting statements, reported directly to Skilling for years and took part in conference calls with Lay in fall 2001 as Enron fell from being one of the world's largest companies to one of the country's largest bankruptcies.

Unlike Fastow, however, Causey doesn't have the taint of having tried to personally enrich himself through side deals, as Fastow admitted in his plea agreement.

"To have another high ranking officer who knows the numbers but who hasn't been demonized the same way Fastow has serves the government's case very well," said Robert Mintz, a

New Jersey-based legal expert who follows the case. "From the standpoint of wanting to go into the trial from a position of strength, this is not what Skilling and Lay were hoping for on the eve of trial."

Losing an ally of Causey's stature so close to trial could throw off Lay and Skilling's defense and leave them scrambling to prepare for his likely testimony. But a Causey plea deal was hardly unexpected and had been rumored since shortly after he was indicted last year.

Causey faced 36 counts of conspiracy, wire fraud, security fraud, insider trading, money laundering and making false statements on financial reports.

Prosecutors alleged that he and Fastow handwrote a document known as the "global galactic" agreement that essentially ensured the Fastow partnerships would not lose money in their Enron deals. Such agreements would have made the accounting for the deals improper.

Lay faces 11 criminal counts, many of them focused on the last few months of the company's prebankruptcy operations. Skilling faces 35 counts.

Lay, Skilling and Causey had a joint defense agreement, meaning they agreed to share information for trial. Terms of such agreements vary widely, but it could mean some information Causey became privy to through the Lay and Skilling teams would be off limits, or at least could only be used with certain restrictions, if he cooperates with the government.

David Berg, a Houston defense attorney who has followed the case, said the Lay and Skilling teams may try and compare Causey to David Duncan, the former Arthur Andersen executive who pleaded guilty in connection to the 2002 document shredding case. The U.S. Supreme Court overturned a guilty verdict against the accounting firm and Duncan's guilty plea was withdrawn.

"Duncan pled guilty, but when he got on the stand it was pretty clear he was innocent," Berg said, referring to testimony Duncan gave under cross examination. "I think the main hope of the defense will be to make the case that Causey cratered under pressure, that he just pled so he could avoid a long jail sentence."

# APPENDIX BR

## *A fair trial doesn't mean a shut-off of all opinions*

THE HOUSTON CHRONICLE

Wednesday, January 18,
2006

3 STAR EDITION

Section BUSINESS, page 1

By Loren Steffy, Staff

IT'S my fault. That's what the attorneys for Ken Lay and Jeff Skilling would have you believe. If the toppled Enron kingpins don't get a fair trial here, it's in part because I keep referring to them with terms like that.

That's one of the arguments defense attorneys made in yet another motion filed Tuesday with U.S. District Judge Sim Lake.

In the filing I am, quite literally, "Exhibit A," the chief tainter of potential jurors.

In the Enron case, my writings have been cited several times by defense attorneys when raising questions of jury bias and begging for a venue change. I write about them, and they, in turn, write about me. Now I am writing about them writing about me writing about them. And when "this" column ends up in the next motion - well, you get the idea.

It is a circuitous exercise signifying nothing.

I want Ken Lay and Jeff Skilling to get a fair trial, and I believe in the presumption of innocence - that Lay and Skilling aren't guilty unless a jury decides otherwise.

That may seem surprising because I have written some rather harsh words - OK, even mocking words - about Houston's most famous codefendants. I make no apology for that.

This column does not exist to defend Lay and Skilling. They have their lawyers for that. Lay even has his own Web site to spin his views.

This column is for the others.

They are the people who lost everything and for whom "everything" is literal - homes, jobs, life savings, dreams. That's different from a tear-sodden wife bemoaning the loss of "everything" on national television. In that case, "losing everything" meant opening a storefront and selling off antiques.

This column is for people like Charles Prestwood, who called last week to remind me that he's still waiting. Prestwood is an Enron retiree I first wrote about last year. He was a year into retirement when Enron imploded and took his life savings with it. Prestwood joined a class-action lawsuit, but the case can't go to trial until the Lay-Skilling criminal proceeding is over.

He wanted to remind me that he's been waiting for his day in court, too, his shot at justice. That won't happen before at least October, when his case is scheduled to go to trial By then, he will have been waiting for almost five years to put his life back together.

It's important that Lay and Skilling are judged fairly by a jury of their peers. Nowhere, though, does the law say the rest of us must stifle our outrage over Enron's collapse until that justice is served.

Jurors are simply asked to set aside their biases and preconceptions and make a fair decision based on the evidence. People do that every day, in a host of jobs, from pastor to police officer.

The rest of the world doesn't abdicate its freedom of expression simply because the wealthy and powerful go on trial.

I believe justice will be served in Lay-Skilling case. Media coverage has been intense for big trials going back to Bruno Hauptmann and the Lindbergh kidnapping, which journalist H.L. Mencken called "the greatest story since the Resurrection."

Yet media coverage didn't convict O.J. Simpson or Michael Jackson. Here in Houston, one Enron defendant, Sheila Kahanek, was acquitted last year. By acquitting her while convicting others, jurors obviously set aside any Enron-related biases that they may have had and weighed the evidence.

In Birmingham, Ala., a jury last year acquitted Richard Scrushy, the former chief executive of HealthSouth, on charges that he orchestrated a $2.7 billion fraud at the company. Scrushy was a hometown business hero, much as Lay was in Houston, and Scrushy used, just as Lay plans to, the doofus defense, that catch-all veil of convenient executive ignorance.

But Scrushy serves as a reminder that innocence doesn't absolve accountability.

Fair trial or not, guilty or not, Lay and Skilling presided over one of the greatest business failures in history. Blaming them for that, questioning their attempts to spin their poor management into victimization, doesn't convict them.

Lay and Skilling are entitled to their day in court, and the rest of us are entitled to express our opinions. You can find mine under "Exhibit A."

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No. 08-1394

IN THE
# Supreme Court of the United States

JEFFREY K. SKILLING,
*Petitioner*,

v.

UNITED STATES OF AMERICA,
*Respondent*.

**On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

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THE HOUSTON CHRONICLE
"Full Disclosure" Web Log
by Loren Steffy
February 2006

February 28, 2006

*Shredding their way to the top*

Here's a bit of irony from yesterday's Enron trial testimony: Wesley Colwell, who served as the chief accounting officer for Enron North America testified that he now works for a consulting firm called Sirius Solutions. So does former Arthur Andersen partner and shredder-in-chief Tom Bauer. The firm specializes in advising businesses on, among other things, how to comply with new corporate governance rules enacted under the Sarbanes-Oxley law.

That's right, SOX, which was enacted, in part, because of congressional outrage over Enron's collapse.

So two of the guys who helped bring about the need for corporate governance reform are now profiting from the fallout.

February 27, 2006

*Curry's testimony lacks spice*

Wanda Curry is no Paula Rieker. Curry's testimony is laden with accounting terminology, and she seems uncomfortable on the stand. I don't think she's going to hold up well under cross-examination, which we'll probably get to tomorrow.

An interesting distinction, which came up in a discussion with some fellow reporters during the afternoon break, is that the two witnesses who don't have plea deals with the government, Curry and Terry West, have been the weakest that the government have put on.

While the "deal" witnesses give testimony that sounds well-rehearsed, the "non-deal" witnesses often seem to give answers that stray from the point the prosecution is trying to make.

It will be interesting to see if the trend continues as the trial progresses. The government's reliance on plea agreements to make its case is a key issue in the trial. And since earlier today I took issue with Tom Kirkendall's post about the application of the business judgment rule in the Enron case, I should point out that government plea deals are a frequent theme of his Houston's Clear Thinkers blog.

February 27, 2006

### *Internal controls 'nonexistent'*

After being shuffled out of her job as Enron's chief accounting officer for its North American division, Wanda Curry moved into a job reviewing operations for Enron Energy Services, the company's troubled retail electricity division.

When she began reviewing the risk books, the documents that evaluated the risk of the division's energy contracts. What she found was "the internal controls were nonexistent," she said.

The division's books had to be rebuilt.

"It was a complete do-over because we couldn't trust what was in the risk books," she said.

February 27, 2006

### *Not aggressive enough*

Wanda Curry, now on the witness stand, served as chief accounting officer of Enron North America for about five months. She was ousted from that job because she was told that her accounting methods were not aggressive enough.

Cliff Baxter, in particular, was unhappy with her insistence that a year-end deal involving Merrill Lynch include the actual transfer of risk. That, though, would have decreased the earnings reported from the deal, she said.

Imagine that. She got the boot because she insisted on allowing basic accounting standards to get in the way of profit.

February 27, 2006

*Lake cuts to the chase*

Judge Sim Lake, apparently concerned that the cross-examination of former Enron accountant Wesley Colwell was straying off course, intervened and asked a few questions himself early this afternoon. The prosecution argued that the defense's questions involving mark-to-market accounting were beyond the scope of cross-examination.

Lake agreed to allow the questioning to continue, but added this stipulation:

"I want you to give us an explanation of market to market accounting in fewer than five questions."

Laughter broke out in the courtroom. Colwell, who resembles actor William Hurt, seemed a little nervous on the witness stand. After Lake's quip, he continued his testimony with a smirk.

The prosecution continued to object, and Lake sustained one of them, telling defense attorney Randy Oppenheimer, "you've got two more questions."

Oppenheimer got through the questioning, which was designed to show that Enron needed reserve accounts because of its use of mark-to-market accounting. Earlier, Colwell testified earlier that he had twice tapped the reserves to help Enron meeting

Wall Street earnings estimates, under orders from Jeff Skilling.

After more objections, the lawyers approached the bench for a conference, resulting in audio silence.

February 27, 2006

*What's your read on Enron?*

Former Enron accountant Wesley Colwell is again walking the jury through Enron's earning manipulations. It's all pretty dry stuff, and I found my mind wandering a bit.

Last week, I met with a former Enron consultant who said he'd recently re-read Ralph Waldo Emerson's essay "Compensation," and that he found it insightful in providing context to Enron's demise. A few weeks ago, a reader sent an email saying he saw parallels between Enron and the Pentagon under Robert McNamara, as chronicled in David Halberstam's The Best and the Brightest.

Personally, I've always found some interesting similarities between some of the Enron stories and The Great Gatsby. Let's not forget that Nick Carraway made his living as a bond trader.

It seems a fair number of folks are searching for meaning in Enron's collapse, even after all these years. What about the rest of you? Send me your ideas and we can keep a running list here.

February 27, 2006

*Remember the lies*

Tom Kirkendall over at Houston's Clear Thinkers has this lengthy post on the Enron trial, reflecting on the story about Ken Lay's finances in yesterday's New York Times.

Kirkendall points out that while Ken Lay may, according to the Times, spend some $30 million on his defense, the government has probably spent far more prosecuting him.

So, what are we to make of this extraordinary expenditure of resources? My sense is that it is a stark reflection of the folly of engaging in the the type of criminalization of corporate agency costs -- which is legalese for the prosecution of merely questionable business decisions -- that has been a large part of the Enron Task Force's largely ineffective trials to date in the Enron-related cases.

While the Task Force has properly obtained plea bargains from former Enron CFO Andrew Fastow and the relative few of his cohorts who effectively embezzled money from Enron, the Task Force prosecutors have not limited themselves to such clear cases of theft and fraud. Rather, the Task Force has spent an enormous amount of time and resources criminalizing business decisions that simply do not involve the black-and-white circumstances of theft. Indeed, these types of business decisions involve judgments over various possible alternatives, a number of which -- given the nature of business risk -- will turn out badly and result in a loss for the company.

Kirkendall's a defense lawyer who represents several former Enron executives, which gives him an interesting perspective on the government's tactics. There's no arguing with his assertion that the Enron Task Force's trial record is spotty.

However, that doesn't make what happened at Enron the result of simple business risk-taking gone bad. This is becoming a common refrain among the supporters of the defense, and its a view heavily promoted by Lay's spin campaign prior to the trial.

The problem is that Enron executives, including Lay and Skilling, repeatedly misled investors. You can hear that on the conference calls played in court. You can see that in the company's financial statements. You can find that in the way Enron monetized future -- and ultimately non-existent -- revenue as profit. And it's reflected the way Enron executives valued their business.

What's on trial isn't business judgment. What's on trial is whether those lies to the market constituted a crime. Yes, businesses, rightfully, have legal protections when it comes to making bad judgments. But they don't have legal protections from lying to their owners.

February 23, 2006

*Maybe she didn't want to be cussed out*

On redirect, Paula Rieker was asked why she didn't correct Jeff Skilling when she heard him making incorrect statements to analysts on a conference call. Rieker said she was afraid of Skilling's reaction.

"My prior interactions with him had conditioned me that he didn't want to be corrected."

Gee, where would she get that idea? Could it be she didn't want to be bestowed with Skilling's favorite expletive?

Rieker, who's been tough as nails through three days of testimony finally cracked late this afternoon. Having survived a blistering cross examination by defense lawyer Dan Petrocelli, Rieker began to tear up when asked by prosecutor John Hueston if her plea agreement with the government had had a profound effect on her life.

Rieker, who seemed perky through most of yesterday's testimony, today looks tired. The defense is doing its recross now, and it's possible Rieker may be finished by the end of the day.

February 23, 2006

*Putting words in his mouth*

Once again talking about conference call presentations to analysts, defense attorney Dan

Petrocelli hammered at Paula Rieker's credibility. Rieker has testified that parts of the conference call presentations were misleading.

"You wrote those words," Petrocelli said.

Rieker replied that she did have a role in preparing scripts for the presentations: "I knew that there were misrepresentations in those conference call scripts."

Then Petrocelli pounced:

"So you wrote words that you knew weren't true and had Mr. Skilling read them? Are you saying you had conversations with Mr. Skilling where he told you to write lies for him to read?"

And there it is, folks. The doofus defense has finally reared its head. Skilling, you see, didn't know what he was saying. He just showed up and read the script. He was just the talking head.

If Petrocelli ever got food poisoning in a restaurant, he'd no doubt blame the waiter.

February 23, 2006

*Watch out for those laser-beam eyes*

When asked about Enron's investment in the startup company Avici investment, Paula Rieker said that Enron had acquired stock in the telecommunications company, but she didn't know the details.

Petrocelli said it was a great investment that generated "a pile of money" for Enron. Rieker corrected him, saying Avici didn't generate any cash for Enron.

"I didn't say cash," Petrocelli said.

"When you said "pile of money, I'm thinking 'cash'," Rieker shot back.

Rieker's disdain for Petrocelli is clear. When she's annoyed, she has a habit of running her tongue around the inside of her mouth. If her eyes were laser beams, Petrocelli would be molten lump on the floor by now.

Petrocelli, meanwhile, continued to pepper Rieker about her testimony that Jeff Skilling told her not tell analysts about misstatements he made to analysts. Those conversations, Petrocelli said, didn't come up her depositions. It only surfaced after she began her preparations for the trial.

He went on to suggest that Rieker was unqualified to determine what information should be released to investors. Petrocelli may have scored some points by showing that Rieker had limited contact with Skilling, meeting with him for only about three hours every three months.

February 23, 2006

*No more happy face*

Paula Rieker isn't smiling today. Under cross examination by Dan Petrocelli, attorney for Jeff Skilling, Enron's former corporate secretary is decided more curt in her answers. Yesterday, under cross from Ken Lay's attorney, Rieker still managed to smile, even when disputing points the defense was trying to make.

When the proceedings resumed after lunch today, Petrocelli began peppering Rieker with questions about why she didn't contradict Skilling when she saw him stating incorrect revenue numbers for Enron's broadband unit.

February 22, 2006

*No gut punches for Andy*

Under cross examination, defense attorney Bruce Collins asked Paula Rieker about an e-mail exchange she had with former Chief Financial Officer Andrew Fastow in late October 2001. This was about the time that Fastow's role in setting up and profiting from off-balance-sheet partnerships was coming under fire on Wall Street and Enron's stock price was falling.

At the end of the message, Reiker told Fastow: "Hang in there."

Collins asked if that meant she "had some sympathy or some mixed feelings for Mr. Fastow."

Rieker replied:

"I had a lifelong training of being nice to people, and I didn't think it was my role to punch Andy in the stomach."

True enough. There was -- and still is -- a long line others vying for that role.

February 22, 2006

*An entity by any other name*

Paula Rieker is squabbling with defense attorney Bruce Collins over Ken Lay's comments to analysts that he wasn't sure the Raptor partnership had a name. Raptor, Collins asserted, was merely an internal designation, not an actual name.

Rieker argued that by giving the partnership a name, it made it clear to analysts that the partnership was a separate entity from LJM, the primary ruse in Enron's off-balance-sheet accounting. Collins countered that it wouldn't matter what the name was. "They could have called it brontosaurus, or eagle," he said.

Heck, they could have called it Cesspool for that matter. But the fact remains that Raptor did have a name, and that name is included on the list of Enron subsidiaries filed its 10-K annual report.

February 22, 2006

*Unwound and found*

If Enron had secret financial obligations and didn't tell anybody about them until they were unwound, did they matter?

That's the crux of defense attorney Bruce Collins' cross examination this afternoon. Paula Rieker, Enron's former corporate secretary, testified yesterday that she questioned Ken Lay about the stock price triggers she'd learned about involving the partnership known as Raptor.

Collins got Rieker to admit that by the time she'd learned of the triggers, they'd been unwound. So then, Collins wondered, was it unusual that Lay seemed to have no reaction?

"I thought it was highly unusual for there to be a trigger for the Raptors, and that it would be of interest to investors and that it should be disclosed," Rieker replied.

The defense, it seems, would have the jury believe that hiding material financial information from investors was fine as long as those hidden obligations didn't blow up. What the owners of the company didn't know, in other words, wouldn't hurt them.

Then again, the whole crashing and burning in the biggest bankruptcy in history kind of undermines that argument....

February 22, 2006

*What about the lawyers?*

I get asked that question a lot. Why is it the lawyers who advised Enron seem to avoid blame for their role in Enron's collapse? Today, Corporate Counsel has an article that interviews a dozen in-house Enron lawyers and asked them what lessons they learned from the company's failure.

The dozen former Enron attorneys who spoke to us ruminated long and hard about what would have made their department more effective. They fingered two culprits. The legal department was decentralized; most of the company's lawyers worked for the business units. This isn't a problem in itself, but in Enron's case the business unit executives often pressured attorneys to keep misgivings about controversial deals or accounting practices to themselves. Plus, the lawyers say, there was little central control from the company's general counsel, James Derrick. Finally, under Enron's compensation system, business executives effectively decided most lawyers' pay. This mix limited the attorneys' ability — and incentive — to play grown-up to the company's often-reckless entrepreneurs by nixing their deals.

(Hat tip to the Wall Street Journal's LawBlog)

By the way, when people ask me why Enron's outside lawyers get a pass for their role in facilitating Enron's shenanigans, I remind them that they don't.

February 22, 2006

*Hacking a poor substitute for freedom*

In response to my column today, one reader pointed out that the Chron's resident techie and blogmeister, Dwight Silverman, had noted in this post on his TechBlog that hackers were circumventing the Chinese government's restrictions on Google's Web searches.

The writer made this point:

The Google China search function has been hacked allowing full, uncensored results. You don't suppose Google deliberately made it easy to hack and won't prevent the hack from being used? Maybe even leaked the hack?

First of all, the number of people who are willing to hack Google, and risk imprisonment, is far smaller than the millions of Web users in China. Secondly, now that the hack is now known to government censors, and given that Google has capitulated to the government before, what's to stop Google from turning over the names of any hackers to the government? What's good for Yahoo, after all, ought to be acceptable for Google.

For more on the issue, check out this article by Thomas Lipscomb, a senior fellow at the Annenberg Center for the Digital Future at USC.

If you think this is a technology issue, think again. It's about freedom of speech, and Google, which has a bigger market value than all U.S. newspaper companies combined, has set a dangerous precedent.

February 22, 2006

*Rieker unflappable under cross*

Paula Rieker, Enron's former corporate secretary, has held up well under cross examination. Bruce Collins, an attorney for Ken Lay, has tried to chip away at her credibility, but Rieker has stood firm.

Collins tried to show that Rieker didn't have expertise in accounting, but Rieker fired back that she knew, better than many other Enron executives, what analysts expected and how they measured the business.

Collins tried, for example, to say that the flow and value of contracts for Enron's retail energy business were no longer important because the business had grown beyond the startup phase.

"This was not a mature business," Rieker replied, going on to state that analysts still considered the volume and value of contracts important.

Through it all, Rieker fended off the questions with a smile glued to her face. I can't see the jury from my seat in the overflow room, but from where I'm sitting, Rieker is coming off as smart, articulate and unshakable in her testimony.

Another observation about Rieker: she's incredibly efficient, even as a witness. When the court breaks, she neatly stacks all the notebooks containing exhibits. That, of course, is what you'd expect from a corporate secretary, but it's also a subtle sign to the jury. This isn't a woman who makes off-the-cuff statements or its prone to hyperbole.

She's shaping up to be Ken Lay's biggest nightmare so far. The real showdown though is yet to come. Skilling's lead attorney, Dan Petrocelli, will taken on Rieker when Collins is done.

February 21, 2006

*Rieker best witness so far*

Paula Rieker, Enron's former corporate secretary and investor relations manager, is the best witness so far. Her answers are concise and her testimony more direct than that of either Ken Rice or her former boss, Mark Koenig. Mike Ramsey, Lay's attorney, may regret statements he made last week saying he welcomed Rieker's testimony:

"(She) took all the raw notes of all the meetings of the board. They're better than minutes. Board minutes are notoriously dry and empty. Her notes will have a lot more color."

Given the way she's handled herself on the stand, Rieker seems to be meticulous. Her notes might prove more colorful -- and more careful -- than Ramsey would like.

Indeed, Rieker's testimony has directly implicated Lay in misleading investors and in fudging financial disclosures.

No telling how she will hold up under cross examination, of course, but I'm wondering why the prosecution didn't lead off with Rieker instead of Koenig.

February 21, 2006

*Gibberish by any other name*

Paula Rieker, Enron's corporate secretary, said even she didn't understand the financial babble that Enron used to hide from investors Andrew Fastow's role in running side partnerships.

Rieker read the entire footnote from Enron's financial statements to the jury. Here's an excerpt:

> In 2000 and 1999, Enron entered into transactions with limited partnerships (the Related Party) whose general partner's managing member is a senior officer of Enron. The limited partners of the Related Party are unrelated to Enron. Management believes that the terms of the transactions with the Related Party were reasonable compared to those which could have been negotiated with unrelated third parties.
>
> In 2000, Enron entered into transactions with the Related Party to hedge certain merchant investments and other assets. As part of the transactions, Enron (i) contributed to newly-formed entities (the Entities) assets valued at approximately $1.2 billion, including $150 million in Enron notes payable, 3.7million restricted shares of outstanding Enron common stock and the right to receive up to 18.0 million shares of outstanding Enron common stock in March 2003 (subject to certain conditions) and (ii) transferred to the

> Entities assets valued at approximately $309 million, including a $50 million note payable and an investment in an entity that indirectly holds warrants convertible into common stock of an Enron equity method investee. In return, Enron received economic interests in the Entities, $309 million in notes receivable, of which $259 million is recorded at Enron's carryover basis of zero, and a special distribution from the Entities in the form of $1.2 billion in notes receivable, subject to changes in the principal for amounts payable by Enron in connection with the execution of additional derivative instruments. Cash in these Entities of $172.6 million is invested in Enron demand notes. In addition, Enron paid $123 million to purchase share-settled options from the Entities on 21.7 million shares of Enron common stock. The Entities paid Enron $10.7 million to terminate the share-settled options on 14.6 million shares of Enron common stock outstanding. In late 2000, Enron entered into share-settled collar arrangements with the Entities on 15.4 million shares of Enron common stock. Such arrangements will be accounted for as equity transactions when settled.

When asked if she understood what it meant, she said: "No."

Rieker said she tried to rewrite the section to make it more clear, but the accounting department rejected her wording.

In a separate discussion, Rieker said when she heard that the Raptor partnership included share-price triggers, she confronted Ken Lay about it. Lay confirmed that the Raptor structure included triggers that would require Enron to inject capital into the partnership if Enron's share price fell.

Rieker said she urged Lay to disclose that information to investors, saying it was material information that needed to be disclosed. Lay's response, Rieker said, was "acknowledgment, but no reaction."

After an uncomfortable silence, she said she left the room. "I felt really awkward," she said.

No doubt. The emperor doesn't like being told he's nekkid.

February 21, 2006

*A bird with no name*

During a conference call in October 2001, Enron didn't include a $1.2 billion writedown in shareholder equity in the third-quarter earnings release. Ken Lay slipped a one-sentence mention of it in his remarks to analysts during a conference call.

By leaving the number out of the earnings release, Enron knew the number would get less attention than if it had been distributed to the financial press, she said.

The writedown was a actually the result of "an accounting error," Rieker said. During the call, though, Lay said it related to the early termination of a structured finance arrangement with a "previously previously disclosed entity."

That entity, by the way, was Raptor, one of the more infamous Enron off-balance-sheet partnerships. Enron's outside accountants had ordered Enron to consolidate Raptor on its balance sheet, prompting the writedown. It had never been mentioned to analysts before.

When asked about it on the conference call, Lay declined to mention Raptor by name.

"I'm not sure it had a name. It was an internal vehicle that was set up for financing assets. I'm not even sure if it had a name."

Eight days earlier, Lay had told Enron's board that Raptor was "the second most contentious vehicle next to LJM," Rieker testified, referring to the other partnership run by Chief Financial Officer Andrew Fastow.

By not using the name, Enron didn't make clear to analysts what its financial obligations were under the arrangement. After the conference call, Rieker said she received calls from analysts asking about the $1.2 billion writedown, saying they hadn't heard the number on the call.

February 21, 2006

*Read his lips*

Is Jeff Skilling trying to intimdate witnesses? That's the rumor that's been knocking around the halls of the federal courthouse for the past week or so. No one has been able to confirm it. Yesterday, Fortune magazine's Bethany McLean and Peter Elkind, filed this report:

> On Feb. 6, Mark Koenig, Enron's former investor relations chief and the government's very first witness, is enduring a day of grueling cross-examination. After an emotional moment in which Koenig, under aggressive questioning from lead Skilling defense attorney Daniel Petrocelli, briefly teared up as he started to recount having to tell his children that he was guilty of a crime, the judge called a ten-minute recess. As everyone rushed out of the courtroom, Skilling's wife, a former Enron corporate secretary who'd worked with Koenig, burst into tears. After walking her out, Skilling, exiting the courtroom behind Koenig, muttered, "Asshole!"

This, at least, is the story as reported to prosecutor Kathy Ruemmler by someone near the two men. (Koenig apparently did not hear this remark.) At the end of the same day a court officer also approached Ruemmler to tell her about what he viewed as a possible attempt at witness intimidation--he said he had seen Skilling gesturing and mouthing things at Koenig during his testimony. By then a third courtroom source had told Ruemmler that Skilling had been seen mouthing "son of a bitch" at Koenig during his testimony for the prosecution.

Petrocelli acknowledged to FORTUNE that Ruemmler, deputy director of the Enron Task Force, had raised a concern about his client's behavior. But he said that it was untrue Skilling had said anything to Koenig--and that he had told that to Ruemmler. "[Skilling] made no comment, and I didn't know what they were talking about," says Petrocelli. Not only did it not happen, but it could not have happened, because he was never in the same space with him." As for the report about gestures and mouthed remarks in court, Petrocelli called them "absurd" and "irresponsible for anybody to report, in my view, other than to attempt to prejudice Jeff."

In front of the jury, civility -- or at least the appearance of it -- reigned. On Feb. 14, after days spent trying to skewer Koenig, Petrocelli offered this final word as Koenig finally prepared to step down from the witness stand: "I just want to say, on behalf of Jeff Skilling, we wish you all the best."

If true, one can only imagine what words others will be mouthing when Skilling takes the stand.

February 21, 2006

*Rieker connecting the dots*

Paula Rieker, Enron's former corporate secretary, is on the stand this morning, and her testimony is largely fleshing out that of her one-time boss, Mark Koenig.

Rieker has testified about how Enron, under the direction of Ken Lay and Jeff Skilling, repeatedly deceived shareholders by shifting losses from one division to another and by making the profitability of various business units appear better than they were.

Rieker, who looks a little like Nancy Reagan, has been making extensive eye contact with the jury as she answers her questions. Her testimony is starting to fill in some of the gaps in the comments from earlier witnesses.

The proceedings just broke for lunch.

February 17, 2006

*Enron chat*

It may be Friday afternoon before a long weekend, but it's never too late to talk about the Enron trial. I'll be doing a live chat session on the latest developments on Court TV's chat site at 3 p.m. Houston time. Feel free to click in and ask some questions. We'll probably keep it going for a half an hour or so.

February 17, 2006

*Sheila Kahanek speaks*

Sheila Kahanek, the only defendant in an Enron case who's been acquitted, talks in this week's U.S. News & World Report about her views on the trial of

Ken Lay and Jeff Skilling, as well as how her experience changed her views of the legal system.

Some of this has been said before, but it's still an interesting piece. (Hat tip to Houston's Clear Thinkers.)

February 16, 2006

*Rice is done; West takes the stand*

Ken Rice, the former head of Enron's broadband unit, finished his testimony this afternoon. Now on the stand is Terry West, an accountant with what's left of Enron. West says she's been with the company for 25 years. Unlike the two previous witnesses, she doesn't have a deal with the government.

West's job in the late 1990s was to help develop earnings targets and monitor whether the company met them. She helped developed "straw man" estimates that were passed up to Rick Causey, the chief accounting officer, and eventually Jeff Skilling and Ken Lay. Then they would recommend changes and pass them back to her.

Rice seemed relaxed on the stand, even when fending off pointed questions from the defense during cross-examination. West, however, looks nervous even while fielding softball questions from the prosecution. No telling how she'll fare under cross.

February 16, 2006

*Anything exculpatory?*

In a comment to this earlier post, Evan Thomas says I'm too anti-defendant in my coverage of the Enron trial and asks if there was some exculpatory information I've seen in the testimony. And actually, there is one thing that I was thinking about last night. It involves Jeff Skilling's aircraft carrier, or as the defense would have it, industrial trawler.

All kidding aside, I think Ken Rice's testimony about the plans for the S.S. Skilling actually undermine the prosecution's claim in its opening statement that Skilling was unloading Enron stock in September 2001 because he knew the company was going down.

It seems to me, if the guy had just quit and planned to sail around the world, he might sell a big slug of stock -- yes, even half his holdings -- to finance the commissioning of such a grand vessel. Sure, Skilling still had millions laying around, but there's nothing improper about selling stock and putting the money into another investment, such as an automobile-bearing yacht.

So I'd consider that exculpatory, except for one thing: Skilling himself has never made that argument. He claims he sold stock because he was distraught over the 9/11 terrorist attacks. Which, as I've pointed out before, doesn't explain the phone call to his broker on Sept. 6.

February 15, 2006

*'Roadkill' deals that might have been*

Testifying about Enron Broadband's plans to acquire another fiber optic network, former division chief Ken Rice said Enron looked at a list of industry "roadkill" that included PSINet and Global Crossing. Adding to this fine list of companies, Rice also said he considered trying to do a deal with WorldCom, which controlled about half of all the U.S. internet traffic at the time.

Rice said he saw such a deal as unlikely, but think if it had gone through. It would have linked the two biggest accounting frauds and bankruptcies in history.

February 15, 2006

*What's on the balance sheet?*

In a lengthy discussion about whether Enron's broadband unit needed to do a major acquisition to stay in business in early 2001, defense attorney Mark Holscher posed a question to Ken Rice:

"In early 2001, how much money did you think Enron had on its balance sheet?"

Well, that would depend on whether Jeff Skilling produced a balance sheet for him, wouldn't it?

February 15, 2006

### *The Bard and the barrister*

In discussing statements that Ken Rice made during a 2001 analyst conference call, defense attorney Mark Holscher's questioning drew repeated objections from the prosecution, who claimed he was attempting to stage a "mini-trial" of the former broadband division chief.

Judge Sim Lake grew impatient with the questioning, too, telling Holscher to stick to relevant questions. Holscher said he was trying to establish the context for Rice's statements. Lake shot back:

"If you're going to question him about Shakespeare, you don't have to start with the invention of the alphabet. I'm tired of hearing statements, let get to some questions."

Holscher tried again, but the entire process soon broke down into a "sidebar" discussion among the lawyers. We're now on audio silence.

February 15, 2006

### *Enron, with a twist*

If you're getting bored with the pace of the Trial of the Century, here's an interesting diversion.

It's one of those face-distorting sites, previously devoted to politicians. Now, through the marvels of technology, you can distort and contort pictures of

Ken Lay, Jeff Skilling and Andy Fastow. It's silly, yet amazingly satisfying....

February 15, 2006

*Don't cry for Mike Ramsey*

Yesterday's testimony by former Enron Broadband chief Ken Rice dealt mostly with Jeff Skilling. It wasn't, as one of my colleagues put it, a "Lay day." But Ken Lay's attorney, Mike Ramsey, made a few comments to the press after court anyway.

Ramsey took a fair amount of scolding from Judge Sim Lake during the marathon cross-examination this week and last of former investor relations head Mark Koenig. Asked about that, Ramsey replied:

"I think that's happened in any trial I've ever been in."

Ramsey, in other words, is playing for the jury, not the pleasure of the judge. That is, after all, his job. He's put a lot of information in front of jurors -- evidence that should have been beyond the scope of cross-examination -- only to have it pulled back when the judge sustains the prosecution's objections. In that way, Ramsey is getting to tell the defense's story on his own terms, bit by bit.

For all his scolding, Lake has been remarkably tolerant of the tactic. Rice should wrap up his testimony this morning and then face cross-examination.

February 14, 2006

*Would it be christened 'Enterprise'?*

The highlight of today's testimony came right at the end, as the prosecution was wrapping up its questioning of Ken Rice, who ran Enron Broadband Services. Rice said he met Jeff Skilling for lunch at Vincent's on Aug. 1, 2001. Skilling told Rice he intended to leave Enron in a few weeks.

Rice said he was shocked by the news. Skilling said he was leaving for personal reasons, that his job running Enron was no longer fun and that he wanted to buy a boat and sail to different parts of the world.

Then, Rice clarified his statement.

"It was more like a ship. It was a big boat that you could put cars on and maybe a helicopter."

Asked by prosecutor Sean Berkowitz what he did after the lunch, Rice replied: "I went back to my office and I sold stock."

That's all for today, folks. The prosecution is almost done with Rice. No telling how long the defense will take or how many audio tapes it will play.

February 14, 2006

*Just hit play*

Prosecutors returned from lunch by playing a video tape of an employee meeting in Portland, Ore., from March 2001. In it, Ken Rice, the former head of the broadband division talked about the difficulties facing the business.

"What we've seen is an absolute meltdown," he says on the tape, a precursor to announcing job cuts at the division.

This is the same tape that the prosecution used in its opening arguments. Later on the tape, Skilling tells employees the division's financial situation is dire. Eight days later he told securities analysts that the division was "looking good."

The defense, of course, raised the issue (again) that prosecutors didn't play the entire tape, so look for the deleted scenes to be covered in cross-examination.

Lead prosecutor Sean Berkowitz, taking over the questioning from Kathryn Ruemmler, who handled the last witness, has picked up the pace of questioning. He also has avoided a lot of the technical jargon that bogged down the broadband trial last year.

Look for all that to change when the defense gets its turn.

February 14, 2006

*Nuthin' from nuthin' leaves broadband*

In his first day of testimony, Ken Rice, who ran Enron's broadband business, said the division never made a profit and that the only bright spot in the company's finances came from the sale of assets.

"For the first few years of the business, almost none of the gross margin came from our strategic businesses," he said.

A big chunk of those asset sales involved "dark fiber," the unused fiber optic cable that had saturated the market for high-speed internet service.

Of all Enron's charades, broadband may have been the most outlandish. Rice said Jeff Skilling wanted to boost Enron's stock price, and saw broadband as good way to do that. In the heady days of the late 90s, anything involving bandwidth would have caused Wall Street to salivate.

Enron wanted to convince the market that it's approach to the broadband business was similar to its energy operations. That way it could claim it knew what it was doing, Rice said.

Even by selling dark fiber to partnerships controlled by Enron's chief financial officer, though, the company couldn't achieve profitability. It looked at shifting costs to other parts of the company and eventually decided to layoff employees, something that rarely happened at Enron, Rice said.

All of this from a part of the company that we heard last week that Jeff Skilling declared was worth $36 billion.

February 13, 2006

*Not so fast, Mr. Koenig*

The prosecution finished with their redirect of Mark Koenig, but defense attorneys now want another half hour's worth of re-cross. So Koenig will go into his eighth day of testimony tomorrow. I'm looking forward to Ken Rice taking the stand just to see a different face.

February 13, 2006

*Pass the witness, like a stone*

Mike Ramsey, Ken Lay's lawyer, has finally finished with his cross-examination of Mark Koenig, who ran Enron's investor relations operation. The cross ended on a note that was, basically, cross. Ramsey was repeatedly chastised by Judge Sim Lake for his line of questioning, which included asking Koenig what he thought about the board's sentiment towards former Chief Financial Officer Andrew Fastow.

Lake sustained prosecutors' objections several times before demanding to know the relevance Ramsey's questioning. In the end, Ramsey punted and turned Koenig back over to the prosecution.

Ramsey and Skilling's lawyer, Daniel Petrocelli, have been alternately chipping away at Koenig and playing tapes and videos for five days. This is Koenig's seventh day on the stand.

He'll probably round out today with the prosecution's redirect. Look for the long-awaited testimony of former broadband head Ken Rice starting tomorrow.

February 13, 2006

*What? No balance sheet?*

In a replay of yet another conference call, this one for the third quarter of 2001, an analyst asked former Chairman Ken Lay if the company could provide a balance sheet with its earnings report. You may recall that when an investor asked Jeff Skilling a similar question a few months earlier, Skilling cussed him out. Lay, as is his reputation, took a more diplomatic approach:

"The balance sheet doesn't usually come together until after the earnings are reported."

The analyst pressed on. Would it be possible for the company to make a balance sheet available in the future? Lay replied:

"We will look at that, and in future quarters we may reschedule when our earnings come out so we can offer both an earnings report and a balance sheet at the same time."

Of course, there were no future quarters for Enron investors, but it was a nice sentiment.

By the way, the recipient of Skilling's comment, Richard Grubman, was on this call, too, asking about reserves, liabilities and the Marlin partnership structure. He stymied Enron officials with his questions about the value of Wessex Water and its parent company Azurix, the water business spun off from Enron.

Lay ended the exchange by saying:

"I know you want drive the stock price down, and you've done a good job of that. Let's move on."

"That's pointless," Grubman responded, adding that it was clear that Enron officials didn't want to answer his questions.

"Let's move on," Lay said, echoing a sentiment that ought to become the motto for this trial.

February 13, 2006

*Let me read you a story...*

In the early days of his testimony, former Enron investor relations head Mark Koenig discussed the amount of time he would spend in prison as a result of his plea agreement with the government. Koenig faces as much as 10 years in the clink.

Even if he only has to serve half that time, how will he pass the time? Given the fact that the defense has now had him read lengthy articles from the Wall Street Journal (as he's doing now), BusinessWeek and Fortune, perhaps Koenig could find a new career narrating audio books. He is, after all articulate and seems to have a good vocabulary, though his voice could use a little more inflexion to really bring the stories to life.

February 13, 2006

*'Buys' all the way down*

Testimony resumed this afternoon with Ken Lay's attorney, Mike Ramsey, reviewing analyst reports with former investor relations head Mark Koenig. Ramsey pointed out that many analysts had "buy" ratings on Enron.

"These analysts had 'buys' all the way down," Koenig replied. Koenig's testimony is getting testier, as he spars with Ramsey.

In this case, though, Koenig has a point. Back in the days of tainted sell-side research, few analysts dared to criticize Enron for fear of freezing their firms out of all those investment banking fees Enron spread around the Street.

February 10, 2006

*Court TV, the Enron movie and me*

I'm scheduled for another appearance on Catherine Crier Live this afternoon, sometime after 4:30 Houston time. I'll be doing this one by phone.

Also slated to appear on the show is Alex Gibney, the director of the Enron: The Smartest Guys in the

Room, or as it's more popularly known, "The Enron Movie."

February 10, 2006

*Wanna bet?*

The other day, during a break in the Enron trial, a few of us raised the question of whether any online gaming sites were taking odds on the trial's outcome. I checked early this week, but couldn't find any. Well, as of Wednesday, BetCRIS.com, an Internet gambling portal, began taking wagers, according to this story in the New York Post. (Hat tip to Peter Lattman's Lawblog at the Wall Street Journal Online.)

Right now, the site is giving pretty slim odds that the government can convict former Enron chiefs Kenneth Lay and Jeffrey Skilling.

[snip]

According to the odds posted yesterday on BetCRIS, Lay has a 1 in 50 chance of being found guilty, while odds of a Skilling conviction were even less at 100-1.

The current odds mean that betting on a guilty verdict could have a huge upside.

A $100 bet on a Skilling conviction, for instance, could turn into $100,000 if the jury returns a guilty verdict and the odds stay the same.

BetCRIS took wagers on the Martha Stewart trial, too. And please, folks, do not take this post to mean the Full Disclosure condones Internet gambling.

Besides, the oddsmakers may be soaking up all the media coverage of the trial, but they clearly lack the full understanding of what the defense is up against. I don't think the government's case is a lock, but I'd give them better than 50-1 odds.

UPDATE: Forbes magazine had more on the wagering over the Enron trial in this story.

February 10, 2006

*Reflections on the Enron trial, week two*

No trial today, so I wanted to reflect on some things that happened this week.

First, the defense at the moment is clearly setting the pace of the trial. Former investor relations head Mark Koenig has been on the stand far longer than anyone thought he would be, partly because the defense has been playing hour after hour of audio tapes from old conference calls.

It now looks as if that will continue for most of Monday, as Ken Lay's attorney, Mike Ramsey, continues his cross-examination of Koenig. Koenig, who seemed nervous early in the cross, now appears to be getting irritated at the defense's repeated attacks on him.

Speaking of Ramsey, his stock seems to be falling with both the jury and Judge Sim Lake. Lake was clearly irked with some of Ramsey's tactics, and observers in the courtroom say jurors are picking up on the judge's displeasure.

That's surprising, given that Ramsey, known for his folksy manner and his ability to bond with jurors, seemed to have the edge with jurors after opening arguments.

Meanwhile, Jeff Skilling's lawyer, Daniel Petrocelli, seems to be connecting better with the jury, his taste in aftershave aside. Jurors also seem to have taken a shine to prosecutor Kathryn Ruemmler.

What does all this mean? Probably not a whole lot at this point. Reading juries is like looking a cloud formations. Interpretations are subjective and fleeting. We're still early in a long trial, and a lot could change before this is over.

February 08, 2006

*Open eye, insert pin*

The conference call cavalcade continued this afternoon. It looks like the defense will play at least one more tape today. That should wrap things up for Daniel Petrocelli's cross-examination of Mark Koenig. Tomorrow, though, Lay's lawyer, Mike Ramsey, will have his turn. The word is that Ramsey has even more conference call archives he wants jurors to hear.

Toward the end of a break a little while ago, as I approached the fourth floor media overflow room, a reporter walked up to me and advised me to turn back. Another asked if I had any spare pins he could jab in his eyes.

If there's a bright spot in all this mind-numbing Enron history, it's that after this witness, it will be over. Judge Sim Lake has warned the defense attorneys that the tapes will not be played in their entirety each time someone else takes the stand.

Petrocelli, for his part, is pretty much done picking apart Koenig's testimony. Instead, he is using the tapes as a sort of Enron primer, a way of introducing jurors to the defense's view of the company.

As we know, that view is delusional, as evidenced by Petrocelli's assessment that Enron was a "wonderful company, a shining star."

February 08, 2006

*Petrocelli comes up short*

Meanwhile, back at the trial...

In between marathon conference calls and videos, defense lawyer Daniel Petrocelli once again began trotting out the argument that evil short sellers brought Enron down.

Petrocelli's a busy guy, what with the Trial of the Century and all, so he may have missed my column from last week and the previous post on this blog in which I debunked this little defense fantasy.

February 07, 2006

*Note to self: tomorrow, bring a pillow*

That wraps things up for today. Cross-examination of Mark Koenig will continue tomorrow, when defense attorney Daniel Petrocelli has threatened to play audio tapes of four analyst conference calls and one employee video. That's roughly five hours all told, so don't be surprised if blogging is light to non-existent.

February 07, 2006

*The envelope please...*

Mark Koenig put only one item on his list of lies. It related to Ken Lay's statements about the volume of Enron's wholesale business. Maybe Koenig dozed off during the tape.

It's a common danger in these proceedings. At the moment, for example, defense lawyer Daniel Petrocelli is having Koenig read the forward-looking statement disclaimer.

February 07, 2006

*Here are some suggestions for the list*

Mark Koenig doesn't seem to be writing a lot down on his list of lies, so I guess I'll jot down a few suggestions for him.

1) On the tape of the 2001 analyst meeting, Jeff Skilling said of the broadband business: "The franchise is there. The market is there."

2) Skilling said its broadband business was going strong, both in new contracts and in content, a reference to the ephemeral Blockbuster deal.

3) Later, in telling analysts what each segment of Enron's business was worth, Skilling estimated broadband's value at $40 a share. Given the amount of Enron stock outstanding at the time, that would have made the business worth $36 billion. That was at a time when the broadband market was imploding.

If those whoppers aren't enough for you, how about a side of irony with that?

In talking about Enron's $100 million in annual revenue, Skilling said: "That number is going to go up startlingly over the next four to five years."

He capped that with a prediction that Enron's stock would be worth $126 a share the following year. Skilling told analysts that in previous years, he'd been good at predicting the stock price. In 2001, he was only off by $126.

February 07, 2006

*Better get a jumbo legal pad...*

The defense cross-examination continued with the playing of a tape of Enron's 2001 annual analysts conference. As the tape began, defense lawyer Daniel Petrocelli instructed witness Mark Koenig:

"Every time you hear a lie from Mr. Lay, I want you to write it down. Every time you hear a lie from Mr. Skilling, I want you to write it down. When I say 'lie,' I mean something that you know they know is false."

That drew an objection from prosecutor Kathryn Ruemmler, who claimed it was beyond the scope of the cross-examination. Judge Sim Lake agreed, but allowed Petrocelli to proceed because it would save time in the proceedings later.

"I don't want to see this played with other witnesses," Lake cautioned. Ruemmler objected again, saying Koenig has no way of knowing if Lay and Skilling knew what they were saying was a lie.

"Just write down everything you think is untrue," the judge told Koenig. And then, at Ruemmler's request, added "and misleading" to his instruction.

From where I'm sitting, it's hard to see if Koenig is writing. I hope the witness stand has an ergonomic writing surface. I'd hate for him to get a repetitive-stress injury.

February 07, 2006

*'Primarily' uneventful*

Just a short post to let you know I hadn't forgotten about the Trial of the Century. It's been a painfully slow afternoon in the ol' courtroom. Much of the time was spent with Skilling lawyer Daniel Petrocelli debating former investor relations head Mark Koenig over how frequently the word "primarily" was used in earnings press releases.

Petrocelli is picking at Koenig's testimony piece by piece. So far, though, Petrocelli hasn't landed the sort of blow that would undermine Koenig's testimony with the jury. We're at a short break now.

Look for the cross examination of Koenig to continue today and into tomorrow. After Petrocelli's done with him, Ken Lay's lawyer, Mike Ramsey, will get his turn.

February 06, 2006

*An empty chair revisited*

As Ken Lay's trial enters its second week, the Missourian, the student newspaper at the University of Missouri, reminds us that the chair in economics that Lay endowed remains unfilled. I wrote a column about the empty chair back in 2004. As I noted at the time:

In an e-mail obtained by the Columbia Daily Tribune, Missouri Chancellor Richard Wallace said if Lay were convicted, the school would prefer to remove his name from the professorship, and "in accord with the terms of the endowment, we believe that this would require returning the money to Mr. Lay," according to an Associated Press report.

In Lay's case, returning the money would be an outright insult to the thousands of Enron employees who lost their jobs and their retirement money. As he did with so much else, Lay used Enron stock as his currency to endow the scholarship in 1999.

School officials, in what proved to be a shrewd investment decision, sold the stock and netted the $1.1 million. That means returning the cash would actually make money for Lay — more than hapless employees who took Lay's advice to buy Enron stock made on their investments.

After I wrote that column, several people wrote to suggest a more fitting resolution to the problem. If the school has to return Lay's gift, why not send it back in the same form it came in? In other words, give Lay the same number of shares of (now worthless) Enron stock he donated.

February 06, 2006

*Birds of a feather...*

The Atlanta Journal-Constitution has this interesting column linking Enron and disgraced lobbyist Jack Abramoff.

One year before the energy firm went belly up, paid adviser Ralph Reed urged Enron officials to hire

Abramoff, then a rising Washington lobbyist, as a "kitchen cabinet" consultant.

The e-mailed endorsement resulted in clubby lunches in which Abramoff and Enron reps, future icons of scandal in Washington and on Wall Street, sat across the table from each other.

It's well-known that Reed worked for both Enron and Abramoff. That he helped them cross paths is not. The e-mail has never been published before.

In a lower-cased e-mail dated Dec. 19, 2000, Reed tapped out: "abramoff is arguably the most influential and effective gop lobbyist in congress. i share several clients with him and have yet to see him lose a battle. he also is very close to [then-House majority leader Tom] Delay and could help enormously on that front."

The message was addressed to Richard Shapiro, Enron's top lobbyist, who met with Abramoff several weeks later, without Reed - according to Shapiro's electronic appointment calendar.

February 06, 2006

*Defense comes out swinging*

Daniel Petrocelli, the lawyer for Jeff Skilling, took over cross-examination of Mark Koenig moments ago, and wasted no time trying to dismantle Koenig's character. In the closing moments of the prosecution's questioning, Kathryn Ruemmler used the term "honesty and candor and fairness."

Petrocelli picked up on the theme as he began his questioning:

"I'd like to talk about your honesty, your candor and your fairness on that witness stand for the last three days."

Petrocelli then pointed out that Koenig had admitted he lied to the Securities and Exchange Commission and the Justice Department before pleading guilty in 2004. He accused Koenig of perjury, which Koenig acknowledged.

Referring to Koenig earlier statements that he lied to protect himself and his family from the taint of the broadening Enron investigation, Petrocelli said: "You're still in a mode of protecting yourself."

He noted that Koenig surrendered about $1.5 million to the government as part of his plea deal, yet he still has about $5 million. Koenig said he wouldn't be able to keep the money because he's a defendant in 14 civil lawsuits brought by former Enron employees and investors.

Petrocelli noted that Koenig is, in fact, fighting those lawsuits, and was successful in fighting a motion in one case that his assets be frozen. If, as Koenig admitted, he lied and deceived people at Enron, why hasn't he offered to settle those suits?

"You've not given them a dime, have you? You still have free use of that $5 million. You could have taken it to Vegas and put it on the roulette wheel."

Then, Petrocelli changed tactics, asking about the number zero. "What does zero mean?" He let the question hang over the courtroom until prosecutors objected because it was vague. Then he turned to Koenig and began questioning again.

> Petrocelli: "Isn't that the amount of time you want to spend in jail?"
>
> Koenig: "I would love for that to be the amount of time I spend in jail."
>
> Petrocelli: "There's some obstacles getting in that way of that zero. Under the terms of that contract, you are required to produce a performance for the government, correct?"

It was Petrocelli, though, who was in full performance mode, as if he was playing for cameras that aren't there.

In answer to his earlier question about whether Koenig's still protecting himself, the former investor relations officer said meekly:

"I don't feel in the last three days like I protected myself in any way."

February 06, 2006

*'It was bizarre to me'*

Former Enron investor relations executive Mark Koenig said he was surprised when former Chairman Ken Lay expressed confidence in Chief Financial Officer Andrew Fastow on a conference call with securities analysts. The comment, in October 2001, came a day before Fastow was fired.

"It was very shocking to me that that endorsement came at that time. It wasn't in the script. It was bizarre to me."

At the time, investors were concerned about the recent revelations of side partnerships that Fastow was running and about Enron's overall financial health.

It's not so bizarre, though, if you put it in context, something the defense has been calling for about every five minutes.

By October 2001, Lay's primary job was applying lipstick to the pig Enron had become. Koenig testified that Lay and former Chief Accounting Officer Rick Causey wanted to avoid any mention of a $1.2 billion writedown in shareholder equity in the company's earnings release, for example.

The more bad news, the more question marks to feed the growing market worry, the more Enron's stock would continue to fall.

As the trial progresses, it's important to remember that the only thing that kept Enron's precarious financial structure intact was a rising stock price. It is the motive for most of what happened at the company. The more the price fell, the more Enron's foundation began to erode, because all the off-balance-sheet partnerships were collateralized with Enron stock.

February 06, 2006

*Cantankerous??*

In case you missed it, the New York Times did this segment in its "What's Online" column Saturday about the Chronicle's trial coverage and its use of blogs in following the Enron case. It included a nice plug for Full Disclosure:

> Another Chronicle blog, this one by the cantankerous business columnist Loren Steffy, offers a less-detached, more colorful view of the trial (blogs.chron.com/fulldisclosure).

My "more colorful view" aside, let me say that it's been exciting to be a part of the Chron's trial coverage. I can't recall another trial that's been covered in this way, combining blogs, online, and print reporting.

Things resume today with more Mark Koenig, the investor relations guy. We should get to cross-examination, which will give us our first taste of the defense in action. On Thursday, lawyers for Ken Lay and Jeff Skilling turned the court into a reading room. We'll see if things pick up today.

February 03, 2006

*Remembering 'Fast Eddie'*

The Enron trial takes Fridays off, so that gives us a chance to catch up on other matters. And what should pop up on the old Full Disclosure radar (hat tip to Houston's Clear Thinkers), but the latest legal travails of Edwin "Fast Eddie" McBirney. McBirney was one of the great wheeler-dealers of the savings and loan era. He looted Dallas' Sunbelt Savings -- known as "Gunbelt Savings" for its Wild West lending tactics. Full Disclosure may have, as Matt B. over at Lone Star Times suggests, "pushed the envelope" with the "manhole" item yesterday, but if we mentioned the lasciviousness of McBirney's trademark parties, thrown at the expense of Sunbelt depositors, we'd be firing the envelope out of a cannon.

Sunbelt collapsed to the tune of $1.2 billion and "Fast Eddie" did five years in the Crossbar Motel after ratting out some of his S&L cronies.

The Dallas Observer (back when it was edited by The Smartest Guys in the Room co-author Peter Elkind) did a great story (written by formerly Houston-based Forbes writer Dan Fisher) in early 1992 on McBirney entitled "Still Sleazy After All These Years." It detailed how he robbed a minor league ball player of his dream and his life savings through a bowling alley deal in Euless, Texas.

Anyway, "Fast Eddie" got out in the mid-1990s, but with five years probation hanging over him, he had to make it appear as if he'd changed his ways.

He still owed the government a pile of money, and he claimed he was broke.

While he was turning his pockets inside-out for the feds, "Fast Eddie" secretly wasted no time getting back in the biz and cashing in on the North Dallas real estate boom. According to this Justice Department press release:

> In March 1996, McBirney, transferred his 5 percent ownership interest in a real estate joint venture to the Oslin Nation Trust and that between March 1998 and December 1999, the joint venture sold approximately 78 acres of real property in Collin County for $1,716,000, for which the trust received payments totaling almost $194,000.

The government presented evidence at trial that between February 1999 and February 2001, McBirney caused the trustee to pay out $2,0054.336 in checks and fund transfers to be paid out of the Oslin Nation Trust bank account for McBirney's expenses, with the intent of concealing the source of the income to the trust from the FDIC.

A jury earlier this week convicted him on 27 counts of fraud, money laundering and concealing assets. Because it violates his probation, "Fast Eddie," who's 53, is looking at 20 more years in Pokeyville and fines of another $2 million.

Buh-bye, Eddie.

# APPENDIX BT

THE HOUSTON CHRONICLE
"Full Disclosure" / A Business Web Log
by Loren Steffy
March 2006

March 31, 2006

*Weekend reading assignment: Enron's lawyers*

This article from the March issue of Corporate Counsel was referred to me by Chron business reporter John Roper. One of the things readers often ask is what about Enron's lawyers? Why aren't they being held accountable. This article does a good job of explaining why Enron's in-house attorneys were so ineffective at stopping the company's financial shenanigans.

The legal department was decentralized; most of the company's lawyers worked for the business units. This isn't a problem in itself, but in Enron's case the business unit executives often pressured attorneys to keep misgivings about controversial deals or accounting practices to themselves. Plus, the lawyers say, there was little central control from the company's general counsel, James Derrick. Finally, under Enron's compensation system, business executives effectively decided most lawyers' pay. This mix limited the attorneys' ability — and incentive — to play grown-up to the company's often-reckless entrepreneurs by nixing their deals.

"Laws and regulations only get you so far," says Stephen Wallace, referring to the Sarbanes-Oxley corporate governance reforms that were passed within months of the Enron implosion. A member of the Enron diaspora and now general counsel of Westlake Chemical Corporation, in Houston, he says a company culture of hands-on management and strong governance is more important in promoting an ethical workplace than legislation. The story of Enron, four years later, is still a powerful reminder of that lesson.

All of which undercuts the argument that defense attorneys for Ken Lay and Jeff Skilling have used that lawyers signed off on Enron's controversial deals. Does that matter, if the lawyers' pay and performance were the responsibility of the guys who put the deals together?

Please discuss.

March 31, 2006

*Looking for root causes in immigration debate*

A reader responded to my column today on the immigration debate by making the point that immigration isn't one of those things that can be effectively "fought." We can't simply build walls or beef up border patrols and keep immigrants out, because they are drawn to opportunity that they can't get in their home countries.

The reader, who is an immigrant himself, thought I didn't go far enough in making this point. He argues that until other countries, especially Mexico, do more to raise living standards in their own countries, immigrants will continue to come. He referred me to this interesting op/ed piece from the Christian Science Monitor that goes into more detail.

It also drives home the point that regardless of the political rhetoric, immigration is fundamentally an issue of economics.

March 30, 2006

*The vultures within*

As I worked on my column for Sunday, looking ahead to the defense in the Enron trial, I ran across a couple of things I thought I'd point out. One relates to the topic of short selling, and the defense's claims that it fed Enron's demise. Ken Lay's attorney, Mike Ramsey, referred to short sellers as "vultures" in his opening arguments.

Keep in mind, though, that the Valhalla trading scandal, which has yet to rear its head in this case, involved Enron traders shorting crude oil. Their position grew so large -- more than seven times what the company had authorized -- that Enron couldn't cover it and almost went bankrupt.

So, in a way, Ramsey was right, it's just that it was a bird of a slightly different feather. The danger that short-selling presented for Enron was in 1987, not 2001, and it wasn't vultures in the market that nearly destroyed the company, it was the vultures within.

We've also heard a lot from Lay and Jeff Skilling about the "run on the bank" that took Enron down. Again, it now appears that in a way, they may be right. As Joanne Cortez's testimony showed on Tuesday, there was a run on the bank at Enron, to the tune of some $77 million. And the one doing the running was Lay himself.

March 29, 2006

*No more Hooters in the sky*

What can you say about the demise of Hooters Air after three years other than it once again proves that the barriers to entry in the airline business are far too low?

March 29, 2006

*Cuban wisdom*

Dallas Mavericks owner Mark Cuban has some good insight into the subject of short-selling, which was prompted by the this 60 Minutes segment on Sunday about the Overstock.com/Bioval/Gradient brouhaha.

(Also on Sunday, the New York Times did this piece on the allegations against Gradient.)

I wrote a column related to this issue a few weeks ago (follow up blog posts here and here).

Cuban zeros in on the real issue, which isn't whether research was tainted to aid short sellers:

Here we have the CEOs of two companies saying that one small research compay out of Arizona can have more influence on the actions of current and potential shareholders than not only every other research company combined, including those who have been following the company for an extended period of time, but also more influence than the CEOs themselves. Of course these CEOs must also believe that what is reported by this company is more important than the results of operations of the company.

Is a single research pen mightier than the P&L, Balance Sheet and Statement of Cash Flows? That is the question you must ask yourself.

[snip]

If you are the CEO of a public company and you think the answer is yes. Please email me with the stock symbol of your company. I want to short it.

Any good CEO knows:

Sticks and Stones my hit my stock price, but a great operating company will make the shorts cover and push the stock price higher.

Amen.

UPDATE: Here's a link to Gradient's response to the 60 Minutes piece, posted on the Wall Street Folly blog.

March 28, 2006

*Desperately seeking witnesses*

Dan Petrocelli, Jeff Skilling's attorney, says he's still hoping some key defense witnesses come forward, even as his team prepares to begin its defense on Monday.

Why are good witnesses so hard to find?

"Fear," Petrocelli said. "This is the Enron case."

Talking to reporters outside the courthouse earlier today, he said many witnesses are afraid to testify for fear the government may prosecute them if they admit to wrongdoing. Keep in mind that Petrocelli has argued with witnesses on the stand who've admitted guilt that they are, in fact, innocent.

"There are people who should be in this court, getting on that witness stand and raising their right hand," he said. "They're not going to do that. We're disappointed."

Nevertheless, Petrocelli said he's glad the trial has reached its midpoint, with the prosecution resting today, and he and his client anxious for their turn.

"We're really relieved to have the first part of the case over, and we're really looking forward to this next part," he said.

Not surprisingly, Petrocelli was unimpressed with the prosecution's case, saying the government scored some "glancing blows" rather than "hard, concrete facts."

Attorneys for both Skilling and Ken Lay said their clients will take the stand, beginning with Skilling probably in the second week of April.

March 28, 2006

*Halftime show*

I'm scheduled to make an appearance on The Abrams Report on MSNBC at about 3:20 p.m. Houston time today. I'll be giving my take on where the Enron trial stands at halftime.

March 28, 2006

*'Spring break'*

Ken Lay's attorney, Bruce Collins, implied in cross-examining Joanne Cortez that Lay's sale of stock back to the company were necessary because Enron's declining stock value was forcing margin calls against him.

Collins also argued that once the stock was returned to Enron's treasury, the company could have sold it in the open market to recoup its value. Of course, it couldn't really. Given the decline in Enron's stock price, the company would have lost money and such sales would have driven down the stock's value even farther.

Collins also said that Lay had agreed to a more complete disclosure of his credit line transactions in the 2001 proxy. Cortez admitted she had no way of knowing that Lay planned that.

Neither, of course, do we. The 2001 proxy was never filed, and Lay's good intentions remain as empty as his promise to repay the $7 million still missing from Enron's coffers.

Cortez was the last government witness, and after her testimony, the prosecution rested its case.

With that, Judge Sim Lake said he was "declaring Spring Break," and recessed court until Monday to give defense attorneys time to prepare for their presentation. In the long run, a better prepared defense will save time by making the proceedings run more efficiently, Lake said.

He still hopes to give the case to the jury by the end of April.

Lake admonished jurors from discussing the case or reading about it during the recess. "I don't know if there's been any media discussion of the case," Lake said.

Gosh, judge, that hurts.

March 28, 2006

*The real whistleblower*

Sherron Watkins has become known as the Enron whistleblower, a moniker that helped get her nominated as Time magazine's co-Person of the Year in 2002. In fairness, Watkins never sought that title, and she never acted like a whistleblower. That's not to take away from the courage she showed in questioning Ken Lay.

Still, the title is a better fit for Joanne Cortez. Cortez was the "senior specialist" who oversaw Lay's credit line. Concerned that he was using the credit line to mask stock sales, Cortez began to track Lay's activity on a separate spreadsheet, putting all the borrowings and stock sales into one timeline.

Cortez noticed that Enron's proxy statement, filed in March 2001, said Lay's $4 million credit line had been repaid in full. That didn't make it clear that Lay was repeatedly borrowing and repaying with stock, she said.

In late 2001, as her concerns mounted, Cortez called an attorney, who in turn contacted the FBI and Cortez turned her spreadsheet over to the authorities.

That's what a whistleblower does.

March 28, 2006

*That's one way to save on ATM fees*

One of the government's final witnesses, Joanne Cortez, is testifying about Ken Lay's use of his line of credit with Enron in late 2001. Lay was allowed to borrow cash from the company and repay the debt with Enron stock.

Because he was selling stock back to the company to repay the credit line, the sales didn't have to be reported to the Securities and Exchange Commission the way normal insider selling would be.

On Aug. 20, 2001, just days after Jeff Skilling resigned, Lay repaid almost all the $4 million credit line with Enron stock, said Cortez, whose job was to manage the credit line at Enron. The next day, he borrowed another $4 million. Cash out, stock in, and so it went through the fall as Enron slid deeper into its financial malaise. In August and September, Lay withdrew as some $20 million from this little piggy bank scheme.

Cortez said she became concerned about how Lay was using the revolving credit, something that Enron offered only to a few top executives. None of the others who had such an arrangement were repaying their loans with stock, she said.

"It made me question if this was being used as somewhat of a tool to sell shares," Cortez said.

In October 2001, Enron's board increased Lay's credit limit to $7.5 million. That's about the same time, by the way, that Enron employees were getting locked out of their 401k plans. Cortez said after she heard of the increase, she cried in a stairwell.

"I was very upset that Mr. Lay's credit line was increased...when the company was in so much trouble," she said.

Cortez herself had bought some Enron stock through payroll deduction, but she didn't sell even when she saw Lay bailing out.

"I didn't think I should do that," she said. "It's a clear indication that something is going on, for the CEO to be selling so much stock," but Cortez said she thought it would be wrong to sell based on her knowledge of Lay's transactions.

In all, Lay borrowed some $77 million and repaid only about $70 million by year's end, according to Cortez's records. In other words, Lay looted his company to the tune of $7 million.

All the while, Lay was telling employees he was a net buyer of the stock and that he thought Enron's stock was a great value. Apparently, it was for him.

Lay's attorneys tried to keep this testimony from jurors, and it's clear why. As the company was going down, Kenny Boy was cashing out. He was using Enron as a private bank to monetize the sinking value of his stock.

Lay, by the way, has never repaid the remaining balance on the credit line.

March 27, 2006

*A prior testimony in one act*

Prosecutors ended the day by reading Jeff Skilling's testimony to the Securities and Exchange Commission, which was investigating possible insider selling by Skilling in September 2001.

Rather than just read the testimony, prosecutors sort of re-enacted it. Leo Wise played the role of the SEC questioner, while Sean Berkowitz, head of the Enron Task Force, played Skilling.

At one point, Skilling's lawyer, Dan Petrocelli, seemed to question Berkowitz's portrayal.

Berkowitz's performance is flat, lacking in emotion. He fails to bring Skilling to life. As the interrogator, Wise is stilted and uncertain.

As actors, both were outshone by fellow prosecutor Kathryn Ruemmler, who earlier today did an impersonation of Petrocelli that seemed to capture the defense attorney's swagger. That came during her redirect of Ben Glisan in which she read a transcript from Petrocelli's cross examination.

Oh, so you're wondering what Skilling actually said to the SEC? Well, for one thing, he told them that he asked Enron for a letter saying he was no longer an officer prior to his decision to sell, which of course, is contradicted by Skilling's phone call to his broker, Glenn Ray, on Sept. 6, 2001.

He also added this little chestnut:

"There was no other reason other than Sept. 11 that I sold the stock,"

Berkowitz, as Skilling, said. Enron, by the way, was the only stock Skilling sold after Sept. 11, he said.

This creates a nifty conundrum for the defense. If you stick to the Sept. 11 issue, Skilling appears to be lying now. If he acknowledges he sold for other reasons, then he appears to have lied to the SEC earlier.

There's no cross for the little one-act play, so that's how things ended for the day.

March 27, 2006

*Sure sounds like a bargain now*

Defense attorneys for Jeff Skilling are cross-examining broker Glenn Ray, who took Skilling's order to sell Enron stock in September 2001. They're playing tapes of phone conversations from early on Sept. 17, 2001, the first day the market opened after the Sept. 11 terror attacks.

On the tape, Skilling says he's worried about the market decline and he wants to sell 500,000 shares of Enron. Skilling told Ray to have his firm's trading desk sell the stock at any price "as long as it's over $30."

March 27, 2006

*Selling Enron*

Jeff Skilling's broker, Glenn Ray, is now on the stand. Ray is testifying about Skilling's attempt to sell about half his Enron stock on Sept. 6, 2001. Ray was a broker for Charles Schwab.

I found myself wondering what a high-net-worth guy like Skilling was doing selling stock through a discount broker.

Prosecutors then played a tape of Skilling's phone conversation, part of which was heard during opening arguments. Skilling had never placed a sell order for Enron stock before, Ray said, and his attempt to sell 200,000 shares struck Ray as unusual.

The sale didn't go through because Schwab still listed Skilling as an Enron officer. On Sept. 17, Skilling called back and said he wanted to sell 500,000 shares. About 109,000 shares were sold, but Schwab's compliance department blocked the sale of the remainder of the shares because the firm still showed Skilling as a company officer.

Schwab hadn't received a letter from Enron confirming Skilling's resignation several weeks earlier.

Skilling called Ray back to press him about the sale. He was on edge because Enron's attorney was at lunch and wouldn't be back for an hour to confirm he'd sent the letter. Skilling wanted Schwab to contact Enron to confirm he'd resigned, but he told Ray not to let on that he planned to sell Enron stock.

"I would prefer that they not know that I'm considering selling," Skilling said on a tape of the phone call. "I just want a clearance from them that I can."

Skilling continued to press Ray, saying that Enron's attorney assured him he could sell as long as he didn't have material inside information. "That's a decision that I have to make," he said. Oops. Oh well.

"I'm worried about the timing on this thing," Skilling continued. "It's going to cost me money if the market goes down to cover their ass," referring to Schwab's compliance department. "If this is a cover-your-ass and it costs me a lot of money I'm not going to be happy about it. I'm worried. The market is dropping now."

Ray said he later was able to reinstate the transaction and complete the sale of all 500,000 shares.

By the way, when Schwab finally did get the letter from Enron, it was dated Sept. 10.

Skilling, you may recall, has said he sold his stock because he was distraught over the Sept. 11 terrorist attacks. And, of course, by that time, the market was dropping, but it doesn't explain Skilling's attempt to sell Enron stock before the attacks.

Maybe some of those short-selling vultures tipped him off to Al Qaeda's plans. Or maybe Skilling tried to use America's tragedy as cover for his financial getaway.

March 27, 2006

### *Aw, that's sweet*

As he wrapped up his re-cross of former Enron treasurer Ben Glisan, defense attorney Dan Petrocelli wished the witness well. Glisan, you may recall, is serving a five-year prison sentence after pleading guilty for his role in Enron's deals.

Glisan is scheduled to be released to home detention in September, and Petrocelli asked him if he was looking forward to returning home. Glisan, of course, said he was.

"I hope you do get cut loose immediately after you're off the witness stand," Petrocelli said, to which Glisan expressed his thanks.

Of course, Petrocelli has been arguing that Glisan is cutting his sentence by testifying, which isn't the case. Despite the defense's best efforts to muddy the waters, the prosecution on redirect cleared up the fact that Glisan's testimony had no bearing on his sentence.

So Petrocelli decided to leave the jury with a lingering innuendo wrapped up in what appeared to be heart-warming sentiment.

Redirect just wrapped up and Glisan was excused, though by all appearances he was not "cut loose." He was returned to federal custody.

March 27, 2006

*No one's asking me, but...*

Actually, that's not quite true. The longer the Enron trial goes on, the more people seem to want to know what I think will happen. So far, the Chron's Web editors haven't felt a need to create an "Ask Loren" page, but with the prosecution getting ready to rest its case this week, I'll give my assessment of where things stand.

The government has put on a strong case. In fact, much stronger than I thought they would, and they've done it without calling former Chief Accounting Officer Rick Causey as a witness. When the defense begins putting on its case next week, it starts from the bottom of a hole.

That said, they could still dig themselves out. The case isn't a lock. The defense has opportunities to create reasonable doubt, and Ken Lay and Jeff Skilling have paid handsomely to for top legal talent. If the cross-examination is any indication, though, it may not be enough.

Securities lawyer Jake Zamansky, writing at Forbes.com, has this take on how the defense will play out. It's an interesting analysis, even though he misspells the name of prosecutor John Hueston and elevates him to leadership of the Enron Task Force, a position actually held by Sean Berkowitz.

This week, after the defense wraps up cross-examination of former Enron treasurer Ben Glisan, we're looking at a handful of witnesses that will address the insider trading charges against Skilling and some of Lay's stock transactions. As I wrote last week, I think Glisan's testimony was the crescendo of the prosecution's case, but it appears they want to leave the jury with the lasting impression of how much Lay and Skilling enriched themselves at the expense of investors and employees.

March 26, 2006

*USB cables -- the shame and the fury*

I've been struggling for several months to set up a print server on my home network without success. A few weeks ago, I got an emailed list of specials from Outpost.com, Fry's online store. One of the promotions was a low-end Hewlett-Packard ink jet printer for about $20. Why mess with a print server when I can simply get another printer for $20, I reasoned. After all, I just need a cheap printer that my kids can use.

So I ordered the printer, which arrived two days later. This weekend, I finally got around to installing it, and -- surprise -- it didn't include a USB cable to connect it to my computer.

This seems to be a new trend with the advent of USB technology -- cables sold separately, and it's quickly becoming my new tech pet peeve. If companies aren't going to include the cables, they should at least disclose that before the sale.

While making other stops, I dashed into an Office Max to buy a USB cable. Even a short one was $23 plus tax. That's right, the cable costs more than the printer itself.

Now, I know there are cheaper USB cables out there if you're willing to look for them. But the whole point of USB was that it was supposed to be more convenient and cheaper than the old pin connectors.

And yes, I bought the blasted cable. I was in a hurry, I wanted to get the printer hookup off my "to do" list, and I wasn't going to get to shop around over the weekend. So I shelled out, and now I'm both angry and ashamed at paying a markup that must be at least 10 times what the thing is worth.

It's enough to make one yearn for the days of the good ol' parallel port....

March 24, 2006

*What's a CEO to do?*

I got an email this morning from a reader who, in response to my column today, found himself wondering how Enron got so far off track.

It's an important question in this case. Keep in mind, that in white collar crime, the issue of whether a crime was committed is often key to determining guilt or innocence. Certainly, that's the case in the Enron trial, where Ken Lay and Jeff Skilling would have us believe that no crimes were committed at Enron, save for some petty pilfering by Andrew Fastow.

As I've said before, I doubt anyone joined Enron planning to commit crimes or engage in shady deals. White collar criminals often don't break the law so much as bend it until they find themselves on the wrong side of it. Fastow himself addressed this in his testimony, when he said that some mornings, he still has a hard time accepting what he did. With all that in mind, here's what the reader sent me:

What's a CEO supposed to do?

This is the interesting ethical question that the Enron mess highlights for us. This question will linger long after the testimony and the headlines fade away.

If you go to a bank to get a loan because you have no cash and are about file for bankruptcy, what do you tell your banker? Do you tell him/her that you have been in business for 10 years, have enjoyed tremendous success in the past and need a line of credit to help with working capital issues that have developed because of the tremendous growth your are enjoying?

Or, do you tell your banker that you are a horrible cash manager, the business has gotten too big to manage, your sales people have been selling to companies that don't pay their bills and you just don't know what to do. Please give me some money to tide me over while I figure out what to do.

These could both be true and they could describe the exact same company at the exact same point in time. If the second is true, a good banker will figure out. If the banker determines that the second is closer to the truth, s/he would be more likely to loan to management that provides the first explanation. A CEO needs hope for, and faith in, a bright future. The CEO is defeated when s/he accepts the second characterization.

It is certainly fair to say that senior management at Enron mischaracterized the truth and frequently left out 'material' facts when communicating externally and internally. After a while when you look back, those communications look a lot more like lies than presenting the truth in the most favorable light. However, if companies always told the stark unadorned truth, they would all fail. At that point, all of our 401k's will be in trouble.

In a later message, he added this:

In the end, it's of little importance if Ken Lay and Jeff Skilling lied. The answer to that question will not make me more or less wealthy. It won't change the blight of Enron on my resume. It does leave me questioning when does telling the truth in a favorable light cross the line and become a lie. I think we can see the line in the distance, when we start dancing close to the line it becomes more difficult to discern. After a while, you can only recognize the line from a distance after you have crossed it.

I agree that the line can be more difficult when you're dancing close to it, but I think most people can still tell where it is. Part of the problem at Enron was that too many people started telling each other the line didn't matter, that it didn't apply to them.

Something to ponder as we head into the weekend. Please discuss.

March 23, 2006

*A 25 percent pay hike for the jury*

After the proceedings today, U.S. District Judge Sim Lake told jurors they've been doing a great job and rewarded them with a 25 percent raise.

"You're completing your 30th day of jury service," Lake said. "Congress has empowered me to give you a raise." Starting Monday, jurors will be paid $50 a day, up from the current $40 stipend. The jury burst into applause at the news.

"Don't spend it all in one place," Lake cautioned. It's not quite like turning $5,800 into a $1 million in two months, but hey, a raise is a raise.

March 23, 2006

*That was no giggle, that was a chuckle*

Ken Lay's attorney, Bruce Collins, started his cross-examination of Ben Glisan with an important topic that obviously has weighed heavily on his client's mind: the giggle.

Yesterday, Glisan described Lay's reaction when he presented the first Raptor transaction to Enron's finance committee. That's the deal that included the put option in which Enron was betting its own stock would fall as a way to funnel money to the LJM partnership. When asked Lay's reaction, Glisan said "he giggled." Asked in what sense, he replied "in delight."

"I've gotten to know Mr. Lay pretty well," Collins said. "He does chuckle. He doesn't giggle."

"I would concede 'chuckle' as opposed to 'giggle'," Glisan replied, chuckling himself at the exchange.

Well, I'm glad we resolved that. Somehow, though, it doesn't exactly undermine Glisan's testimony.

The topic grew more serious after Collins said Lay was chuckling about a comment made by another member of the committee, not at the notion that the Raptor deal was designed to circumvent accounting rules. Glisan disagreed.

"He was very proud of the structure," Glisan said.

So proud, he chuckled in delight.

March 23, 2006

*Befuddle me ELMO*

In cross-examining former Enron Treasurer Ben Glisan, defense attorney Dan Petrocelli wanted to display some documents using a special camera known as an ELMO (not to be confused with this Elmo). Petrocelli and his team weren't able to get the display to work, and he told Judge Sim Lake they were having a problem with the equipment.

"I think the problem is you don't know how to use it," Lake replied, as the courtroom, including Glisan, erupted in laughter.

March 23, 2006

*The purpose of the put*

Was there a legitimate reason for Enron to bet against its own stock price? That's a question Dan Petrocelli is exploring in his cross examination of Ben Glisan.

Enron, you may recall, entered into a put agreement as part of the first Raptor deal, which was basically a financial bet that its stock would fall. Yesterday, Glisan testified that the deal had no business purpose and that the whole structure was designed to circumvent accounting rules.

Under questioning, Glisan agreed with Petrocelli's argument that the purpose was to ensure a profit for Andrew Fastow's LJM partnership. That, Petrocelli argued, was a legitimate business purpose.

Even if that were true, it would be a legitimate purpose wrapped in illegitimacy. LJM wasn't the independent vehicle Enron claimed, and the entire deal was a massive deception on investors. Using the put to pay LJM was legitimate only if you ignore the broader context of deceit that shrouded the entire arrangement.

March 22, 2006

*TCB wasn't worth a buck, Dimon says*

Fortune magazine has a lengthy profile of JP Morgan Chase chief executive Jamie Dimon, who, having trained at the feet of Citigroup's Sandy Weill, knows a thing or two about abrasiveness. Dimon ascended to the helm of Chase after the merger with Bank One, where he'd been biding his time and plotting his return to Wall Street after being ousted by Weill at Citi.

The article is littered with anecdotes about his penny-pinching. But of interest to Texans, and especially Houstonians, is this little tale:

... at a retirement party for J.P. Morgan CFO Dina Dublon, 52 -- whom Dimon was replacing with an ally from Bank One -- Dimon stepped to the podium and praised her service to the company. Then he unleashed a biting one-liner: "But if you paid one dollar for Texas Commerce bank" -- which J.P. Morgan acquired in 1987 for $1.2 billion -- "you paid a dollar too much!" The room, studded with Texas Commerce alumni and executives who had championed the deal, went dead silent.

There's a big ol' tower downtown full of folks who are wondering what they've gotten themselves into...

March 22, 2006

*The OK from Lay*

Ben Glisan says he told Ken Lay in late October 2001 about his $1 million windfall from the Southampton partnership, the secret side deal by which he, Andy Fastow and others took millions from Enron. Fastow was about to be forced from the company in part for his involvement in the deal.

Glisan says he offered to resign. Lay told him to stay.

"He thought my participation was OK, and that the worst thing I could do was resign," Glisan said.

Well, sure, the stock was tanking, the partnership deals were unraveling, and Lay had just been forced to squeeze out Fastow. Losing another top finance official would have probably killed the company.

Glisan acknowledged that participating in the Southampton deal was wrong and that he now regrets it, though not as much as other things he did at Enron.

"At the end of the day, the other actions that I and others took at Enron impacted investors more greatly," he said.

March 22, 2006

*Puts and giggles*

What was Ken Lay's response to one of Enron's most blatant attempts to circumvent accounting rules?

Ben Glisan: He giggled.

Prosecutor Kathy Ruemmler: He giggled?

Glisan: He giggled.

Ruemmler: In what sense?

Glisan: In delight.

That was the response Glisan, Enron's former treasurer, said he received when he explained to Enron's finance committee that a plan to create the first Raptor vehicle in 2000 not only involved questionable accounting but required a transaction that essentially meant Enron was betting against its own stock.

Glisan said before he made the presentation to the finance committee, which included Lay, he discussed the deal at length with Jeff Skilling.

"Mr. Skilling clearly indicated that he understood it and that he liked it," Glisan said. "Mr. Skilling noted that this was not a deal that he would recommend except that it allowed him to circumvent the accounting rules."

The first Raptor deal included Enron taking out a put option on its own stock, basically a bet the shares would fall. Glisan noted that there was no business reason for doing such a deal, and that it didn't involve any transfer of risk, which accounting rules required.

"I did not believe this deal would withstand accounting scrutiny from the [Securities and Exchange Commission]," Glisan said.

But, apparently, it passed the giggle test.

March 22, 2006

### *The long and short (seller) of it*

Prosecutors played a tape of a conference call from October 2001 in which short-seller Richard Grubman questioned Enron officials, including Ken Lay, about the value of Enron's Azurix water business.

Grubman, using public stock data and, to use a cliche from this trial, a sharp pencil, determined that Azurix was a $1 billion liability for Enron. Grubman pressed the point on the call, getting a non-answer from Chief Accounting Officer Rick Causey. Ken Lay cut the conversation off, telling Grubman "I know you want to drive the stock price down and you've done a good job of that."

Short sellers are contrarian investors who profit from falling stock prices. By late 2001, some shorts had begun investing in Enron after finding clues to its financial problems. Keep in mind, that a key part of Lay's defense is that short sellers killed Enron.

Glisan had a different assessment of Grubman's analysis: "While his methods were tortured, he came to pretty much the right answer."

The problems with Azurix had been discussed in numerous meetings in the weeks leading up to the call, most of which Lay attended, Glisan said.

Glisan said he didn't answer Grubman's question on the call because doing so would have confirmed growing market fears about Enron's finances. In notes he took from a call he had later with analysts from Salomon Smith Barney, Glisan said the investment bankers told him that Enron's handling of Grubman's question made Enron look bad. They said "the short got under our skin."

"They felt his question was reasonable and instead of answering it, they felt we blew him off and did it in a manner that didn't make us look well," Glisan said. Salomon told him there was growing concern in the market that Enron couldn't answer questions about its finances.

There was a mounting concern that Enron "manufactured" money rather than earned it, Glisan said, meaning that the company didn't have actual cash flow underlying its business.

Prosecutor Kathy Ruemmler asked if that was a legitimate concern.

"Yes," Glisan said.

As I've said before, regardless of how you feel about short sellers, on Enron, they were right.

March 22, 2006

*Enron diary*

Much of Ben Glisan's testimony is coming from handwritten notes that he made of the many meetings and discussions he had with various senior Enron officials in the fall of 2001. So far, it's the most thorough documentation of Enron's problems.

Andrew Fastow said he made notes about a few meetings or phone conversations, but not others. Defense attorneys hammered at that part of his testimony, questioning his selective notation.

Glisan, however, made almost daily entries in notebooks, some of which are now being shown to the jury via the overhead projection screen where documents are displayed.

March 22, 2006

*Glisan shines as a witness*

During the past few weeks, as the government has been making its case, I've engaged in a little exchange with a former colleague who works for one of the national news organizations covering the trial. When court pauses for a break, I'll walk over to him, and he cups his hand to his ear.

He'll say something like "didn't hear him (or her, depending on the witness), say 'Lay told me to lie, Skilling told me to lie.'" And he's been right. As damaging as some of the testimony has been for Ken Lay and Jeff Skilling, no one has put their hand on the switch.

Until now. Ben Glisan, Enron's former treasurer, is nailing shut the government's case. He spent the morning recounting meetings and discussions in which he says Lay in particular did tell him to lie.

The testimony is coming in a rapid-fire staccato.

When prosecutors have asked Glisan whether Lay knew about problems with Enron's finances, defense atorneys have objected, saying Glisan couldn't know Lay's state of mind. More than once, though, Glisan said he either told Lay of the problems, or he and Lay were in the same meeting where they were discussed.

Most damning was Glisan's claim that in late 2001, Lay directed him to determine how big a loss Enron could report without compromising its credit rating, then back up the numbers to determine what results to report to investors.

After some careful questioning of credit analysts, Glisan said he determined that Enron could sustain a billion-dollar loss and still maintain its ratings, which was essential. Lay and other executives pressed for reporting a bigger loss.

"They asked me to go get more," he said, "to allow the room to take a loss that was larger than a billion dollars. There was no way to do that."

Just days later, Lay stood before employees and made the comment that Enron was in the best shape ever.

The defense is going to have its hands full with this. One way to tell how well a prosecution witness is doing is by the pettiness of the insults Lay's attorney, Mike Ramsey, hurls at them outside of court. Yesterday, Ramsey compared Glisan to a puppet and a trained monkey and dismissed his testimony as "a scripted ventriloquism show."

A puppet? The more Glisan testifies, the longer his former bosses' noses seem to grow.

March 22, 2006

*Where's my 'invitation'?*

OK, this hurts. Halliburton is having its annual meeting in Duncan, Okla., where the company was founded, and they didn't invite me. Two years ago, just weeks after I joined the Chronicle, Halliburton welcomed me with open arms. I thought we had a good time.

Last year, they called to say they were having a meeting, but in keeping with company policy, I -- and other reporters -- couldn't come in. The previous year was a special case. I was welcome to mingle outside, though. I expressed my displeasure at this, and Halliburton chief executive Dave Lesar, in turn, wrote a letter to the editor expressing his displeasure with me.

So I figured that was that. Now, I find they're having their meeting and didn't even tell me. No note. No phone call. No back-handed invitation to stand in the hallway of the Duncan Holiday Inn. (I know, it's actually at the "Simmons Center," but allow me a little literary license. As I said, I'm distressed.)

In fairness, I'm very busy with the Enron trial these days, and that proceeding may not finish by May 17, when Halliburton is having its little get-together. Still, it's the thought -- or lack thereof -- that counts.

But just to show that I'm a good sport, I wanted to offer Halliburton a bit of praise. That's right, praise. I'm not kidding. The company has a proposal before shareholders that would require future severance agreements with top executives to be approved by shareholder vote if they exceed three times the executive's base salary and bonus. It's the kind of proposal more companies should embrace, and Halliburton deserves credit for proposing it.

I'm sorry I won't be there to see it adopted. I hear Duncan is nice this time of year.

March 21, 2006

*Freudian slip?*

In questioning former Enron treasurer Ben Glisan, prosecutor Kathryn Ruemmler asked if Ken

Lay lied, but she stumbled over her words and referred to the former chairman as "Mr. Lie."

She quickly corrected herself.

March 21, 2006

*Glisan in the sun, dancing*

Former Enron treasurer Ben Glisan, who gets a few days out of the clink to testify in the trial of his former bosses, is now on the stand. Mary Flood has already noted that he's wearing Lay-like street clothes instead of prison garb.

In the moments before Judge Sim Lake returned to the courtroom, Glisan could be overhead talking with prosecutor Kathryn Ruemmler. "It's all a dance," he said, and then mentioned that he would invoke his Fifth Amendment rights against self-incrimination.

As soon as he was sworn in, prosecutors requested a bench conference and we went to audio silence. The jury was excused, and prosecutors began asking Glisan about possible crimes he committed at Enron. Glisan invoked the Fifth Amendment and Judge Sim Lake granted him immunity, as expected.

The dance completed, the jury returned and Glisan's direct testimony began. Ruemmler is now asking Glisan about his duties at Enron.

Asked his assessment of Enron's financial condition at the time Jeff Skilling resigned as chief executive officer in August 2001, Glisan said "it was weak."

March 21, 2006

*Eating his words, or at least tasting them again*

Bruce Collins, attorney for Ken Lay, just brought up the old CFO magazine article on Andrew Fastow that quoted S&P analyst Barone. This is the article I linked to recently for a weekend reading assignment.

In it, Barone says:

"He has successfully financed billions of dollars in a manner that has held credit quality. And that is not an easy thing to do. It is a testament to Andy's focus on cash flow and his ability to think outside the box."

When Collins read the quote to him, Barone said: "That's what I believed at the time."

That was before things got "funky." Collins didn't bring it up, but in the same article, Barone is quoted as saying: "Cash is king, and Andy knows that."

Which explains why he put so much of it in his own pocket...

March 21, 2006

*Accounting funk*

Ron Barone, a credit analyst for Standard & Poor's, referred to Enron's off-books partnerships as "funky financing structures" in an internal email that recounted a discussion Barone had with Ken Lay in late 2001. On cross examination from Ken

Lay's attorney, Barone has been parsing out which terms in the message were his and which, such as "right the ship," were used by Lay.

"Funky was my term," Barone said.

Then there was "wacky warehouses of fraud." Oh wait, that was mine....

March 21, 2006

*Of chickens, eggs and credit ratings*

Bruce Collins, an attorney for Ken Lay, is using cross-examination of S&P's Ron Barone to establish the defense's "run on the bank" theory. The idea is that Enron failed not because it was cooking its books but because the market lost confidence in the company. And why did it lose confidence? Why, because rating agencies like S&P cut their ratings on the company, of course.

Collins is showing that S&P had access to Enron's financial information and that it had affirmed Enron's ratings even after Enron reported its third-quarter results on Oct. 15, 2001. S&P cut its rating, from BBB+ to BBB on Nov. 1, once it determined that Enron's plans to sell assets wouldn't fix its financial problems.

After that, the ratings downgrades began to cascade, pushing Enron over what Collins described as a "credit cliff." Credit ratings were Enron's lifeblood because it needed to borrow large amounts of money to fund its trading business. Lower ratings meant those borrowings costs would rise.

Falling credit ratings also served as a warning to counterparties that Enron might not be able to honor its commitments in its trading business. In other words, the credit issues put the one part of Enron's business that was profitable at risk, the final nail in its corporate coffin.

Nevertheless, the defense argument is nothing but a nifty bit of revisionism. Enron's ratings were cut because of its financial problems, not the other way 'round.

March 21, 2006

*Shades of Truman*

Ron Barone, a credit analyst for Standard & Poor's Corp., just wrapped up his direct testimony. One interesting tidbit: Barone said that Ken Lay called him on Oct. 12, 2001, to find out what Enron could do to keep its BBB+ credit rating. According to Barone:

"Mr. Lay informed me that he was aware of our concerns over their deteriorating financial position...and (said) that he would take the necessary steps to shore up the balance sheet and right the ship, that was his term not mine. He said that they would sell assets, that would include the pipeline assets...whatever they deemed necessary."

That sounds a lot like the "Project Truman" deal (see posts here and here) that Andrew Fastow testified about earlier.

March 21, 2006

*Actual testimony from cross-examination*

Here's how things are going in the plodding cross-examination of former Arthur Andersen accountant Tom Bauer by Ken Lay's attorney, Shawn Cleveland.

Cleveland: "You worked pretty hard at Arthur Andersen, didn't you?"

Bauer: "I believe we did, sir."

Judge Sim Lake, sounding increasingly annoyed: "Let's move this along."

Cleveland commented that this was all a key part of the testimony. Well, in column writing, there's a little rule that says if you have to explain what you've written, you probably didn't write it very well. The same can be said for the questioning of witnesses....

Fortunately, soon after, Cleveland passed the witness and the prosecution has begun what Lake emphasized should be a brief redirect.

March 21, 2006

EBIT, IBIT, Obit

You know it's a slow day in court when even the witness looks bored. As former Arthur Andersen accountant Tom Bauer listened to replays of Enron conference calls this morning, he often sat on the stand with his chin propped on the palm of his hand.

Bauer talks in a low, almost soothing tone, like a counselor for a suicide hotline. In fact, he both looks and sounds like Peter Sellers' character Chauncey Gardiner in the movie Being There. He remained calm under cross-examination, occasionally cracking a smile, but never showing signs of agitation, even as a Shawn Cleveland, an attorney for Ken Lay, seemed to grow increasingly outraged in his questioning.

So far, the morning has continued yesterday's detailed review of accounting, including topics such as "scrubbing" and Enron's use of goodwill with regards to its water business.

If this keeps up, Bauer may need toothpicks to prop his eyelids open.

Even Judge Sim Lake was growing impatient with Cleveland's line of questioning, threatening to subtract the time he was spending on it from the defense team's final arguments.

March 20, 2006

*The end of Full Disclosure*

The name, that is.

Ol' FD is going through a little makeover. From now on, the blog will simply be known by my name, which matches the column I've written for the Chronicle for almost two years now. Why? Well, it seems another group was using the "full disclosure" moniker, and they claim to have trademarked it. Personally, I find their claims dubious. While our lawyers exchanged love letters, though, one thing became increasingly clear in discussions with my editors: no one liked "Full Disclosure" except for me and business reporter Tom Fowler, who suggested it.

As Blogmeister Dwight put it, it didn't really reflect what the blog was about, and I must admit I've come to agree with that line of thinking. I chose the name before I started the blog, so I didn't really know what the blog would be.

I thought of some other names, like "Blog FD" or "Note 16," a reference to one of Enron's more dubious financial footnotes, or even "Low Spark," a reference to the old Traffic song that has the great line about "living beyond all your means." But those seemed too obscure.

My colleagues weighed in with their own ideas. Jena Moreno has long advocated for "Fool's Disclosure." David Kaplan sent me a list of possibilities, including "The Business Crank," "Smoke and Mirrors" and "Owner Must be Crazy." Such outpouring of support is truly heartwarming.

I looked to other business columnists with blogs, such as my counterpart in Fort Worth, Mitch Schnurman, who has a blog called "The Schnurmanator." Somehow, "The Steffanator" just didn't work.

I also thought that perhaps I should follow the lead taken by some of my other Chron bloggers, perhaps "BizGuy," "BizMo," or simply "BizBlog." But none of those seemed right either. I even thought about going with "Trademark This!," but decided that would be petty.

At the end of the day, I realized none of the names seemed to fit because the blog is a reflection of the column, and the column itself has no name because it isn't about gimmicks or limitations, it's simply my opinions about a wide range of topics involving the flow of money. So in the interest of making blog and column parallel, I'll just be using my name on this blog from now on. Immodest, perhaps, but trademark-proof.

In case you're wondering, this is the reason I haven't been blogging from the Enron trial today and have instead been giving some of my best material to Fowler.

Please note that if you use an RSS reader, you'll have to re-link to the site. I'm sorry for the inconvenience, folks.

March 20, 2006

Who's 'on to' to whom?

One of the more compelling moments of testimony thus far in the Enron trial is coming under fire from defense attorneys who accuse the government of dancing around the truth. Former broadband division executive Kevin Hannon recounted a meeting in which, after being briefed on a critical analyst report, Jeff Skilling made the comment "they're on to us."

Under cross-examination, defense attorneys raised the prospect that Skilling may have made the comment saracastically. Hannon, who admitted to not having much of a sense of humor, may not have picked up on that.

Now, as Tom Kirkendall over at Houston's Clear Thinkers points out, the defense is demanding that the government release testimony from other witnesses who were at the meeting. Testimony about the comment was conspicuously absent from the testimony of Ken Rice, Andrew Fastow and David Delainey, all of whom supposedly were there.

The defense also accuses the government of waiting until just before court adjourned for the weekend before asking Hannon about the comment, which allowed it to linger in jurors' minds for days. Of course, the defense has resorted to similar tricks itself, but that's not the point. If the government has testimony that could help the defense, it would be obligated to share it, and given that Hannon's comments about the meeting are some of the most damaging to Skilling so far, you'd think the government might have asked some of the other people at the meeting about it.

March 16, 2006

*Another plug for myself*

I'm scheduled for another appearance on Court TV's Catherine Crier Live today, between 4:30 p.m. and 5 p.m. Houston time. I'm told that Sherron Watkins' attorney, Phil Hilder, will be joining me.

UPDATE: Once again, I'll be hosting a live chat session on Court TV's web site just after 5 p m. Houston time. So if you've got questions about the Enron trial, join in.

March 16, 2006

*JetBlue: charity airline?*

This is just bizarre. People are apparently sending checks to JetBlue founder David Neeleman to help the airline make up for its fourth-quarter loss, the first in the airline's short history.

JetBlue founder and chief executive David Neeleman has a become something of an apologist now that the darling of the low-cost, low-fare airline industry has shown its feet or landing gear of clay by racking up a major deficit for 2005 and predicting another for this year. Out in Las Vegas at a Citigroup-sponsored investor conference the other day, Neeleman said he'd been telling anyone who would listen that fares really have to rise another $5 or $10 or so if JetBlue is to avoid more red ink. Antitrust-fearing lawyers, he told the analysts, had urged him to be a little more vague about the dollar figure, but the message was getting out; "people are writing in, and I got one letter with a cheque for $100 saying, 'here's for my last 10 trips'," he recounted at the gambling city's Four Seasons hotel. That may not have been the type of support Neeleman was looking for, but every little bit of green helps JetBlue fly closer to the black ink.

Can you imagine customers doing this for Continental or American? Then again, as The Stalwart notes, JetBlue is a cult airline.

March 15, 2006

*Attempting to undo the damage*

Prosecutor John Hueston, on redirect, attempted to repair the damage that defense attorneys have done to Sherron Watkins' testimony. In responding to questions by Ron Woods, Jeff Skilling's attorney, about her speaking career, Watkins said: "Working at Enron was much more lucrative for me."

Asked if she had tried to find another job since Enron's collapse, Watkins replied: "I've been told by experts that I'm unemployable in corporate America."

Hueston, though, didn't address her Enron stock sales, which leaves a glaring hole in her credibility. Overall, Watkins did an effective job of stating her case, which is very similar to the prosecution's case.

Questioning of Watkins just wrapped up. Because of a scheduling issue with the government's next witness, Judge Sim Lake adjourned the proceedings until Monday morning.

Next up on the list is former Arthur Andersen shredder-in-chief Tom Bauer, then former Enron treasurer Ben Glisan.

March 15, 2006

*Have speech, will travel*

Ron Woods, an attorney for Jeff Skilling, has taken over cross-examination of Sherron Watkins, and he's running through her new career as a speaker for hire.

"I'm attempting to make a living on the lecture circuit," she said, noting that she's booked for a speech next month. Watkins said he gave six speeches in 2002, about two dozen in 2003, a dozen in 2004 and a little less than a dozen last year. For each speech, she's paid between $20,000 and $30,000.

"If this jury were to convict," Woods said, "your source of income would dry up, wouldn't it?"

Watkins said she speaks about failed leadership and that Skilling and Ken Lay "remain failed business figures." She said she will continue to be booked for speeches regardless of the outcome of the trial.

Perhaps. But based on her own testimony, her bookings peaked in 2003, and they've declined in each of the past two years. Could be her fledgling enterprise needs a little boost.

March 15, 2006

*The impeachment of Sherron Watkins*

Ken Lay's attorney, Chip Lewis, returned to a key point that the prosecution glossed over in its direct questioning of Sherron Watkins this morning. Watkins sold about $47,000 worth of Enron stock in August and October of 2001, after she'd written her memo to Lay warning of Enron's accounting problems. Lewis asked if that constituted insider trading.

"I had information the public didn't have," she said. "I wish I hadn't sold. I don't know if a crime was committed." Watkins hasn't been charged with a crime and didn't enter into any agreements with the government in exchange for her testimony.

Lewis pointed out that whether the information Watkins had at the time she sold her stock was material depended on whether the Raptor partnerships consistitute accounting fraud or whether Enron wanted to keep them quiet simply because they looked bad, something the company's attorneys referred to as "bad optics."

If it was just "bad optics," then no insider trading was committed because the information wasn't material, he said. Watkins said the reason she wished she hadn't sold was because her predictions proved accurate.

"I understand that in your world, you think that's true," Lewis said. "But you did not commit insider trading if your premise was, in fact, wrong."

And, of course, she hasn't been charged with a crime.

Lewis also noted that one of the days she sold stock in October was the same day that Lay was forced to sell his Enron stock to meet a margin call.

"I wasn't the leader of the company," Watkins said. "I wasn't making statement to the public that was contrary of my knowledge."

There was an easier way out of this, which Watkins, whose answers to yes-or-no questions have often been long, rambling and off point, didn't take. She could simply have argued that at the time she sold her stock, she had only suspicions that Enron's accounting was fraudulent, but no proof. That may not get her off the hook completely, but it would have done less damage to her credibility.

Lewis hasn't scored many points this afternoon. In fact, up until he got into this issue, it seems that Watkins' answers were doing the defense more harm than good. But he may have landed a roundhouse punch on this issue.

Watkins bailed out of her Enron stock, then went on to profit from a book about her Enron experience and turned herself into a corporate governance consultant based on her largely media-fed reputation as a whistleblower. So she has a lot riding on this.

If she knew she was right, she shouldn't have sold. If she didn't know, then that, too, bolsters the defense.

March 15, 2006

*'A great fable'*

Ken Lay's attorney, Chip Lewis, asked Sherron Watkins if she reviewed the legal documents that created the Raptor partnerships. He piled four massive binders in front of her on the witness stand. Watkins said she wasn't privy to the documents, but she didn't need to see them because she was aware of the outcome.

"That's almost like asking me to look into the plans of the weavers in the 'The Emperor's New Clothes.' You know there's no clothes. You don't need to see the plans for how they weaved it."

Lewis fired back that Watkins had used that response before, and she conceded she had.

"It's a great fable," she said.

March 15, 2006

*Did lawyers break the law?*

Sherron Watkins is giving Ken Lay's attorney, Chip Lewis, a tough time under cross examination. She's argued with many of Lewis' questions, and has obvious disdain for Enron's law firm, Vinson & Elkins.

Watkins said in warning Lay about Enron's accounting problem she wanted Lay to hire a firm other than V&E to investigate Enron's partnership deals because V&E was Enron's law firm and had helped create the deals.

Lay asked V&E to look into Watkins' concerns, anyway. Watkins said she felt V&E's review was meaningless because it was so limited.

"In their own report they state the limits of their accounting ... On the last page of the report they say somebody needs to get back to Ms. Watkins and tell her that a thorough report has been done," she said.

Asked if she believed that V&E did something illegal, Watkins said she believed V&E broke the law by not doing a complete review of the problems.

That's is similar to the conclusion that Neal Batson, Enron's bankruptcy examiner, come to in his final report:

The Examiner concludes that there is sufficient evidence from which a fact-finder could determine that Vinson & Elkins committed malpractice based on Texas Rule 1.12, aided and abetted breaches of fiduciary duty by Enron officers or committed malpractice based on negligence in connection with several transactions.

Those transactions included the LJM partnership deals.

UPDATE: I asked V&E if they wanted to comment on any of this, and V&E partner John Murchison Jr. sent me an email saying he did not "believe that it would be appropriate for us to comment on evidence taken in an ongoing trial." Now, I'm no lawyer, but that seems like it could result in "bad optics."

March 15, 2006

*Watkins cross begins*

The cross-examination of Sherron Watkins began on a cordial note. Lay's attorney, Chip Lewis, set a copy of her book, Power Failure, on the witness stand and said it was a "house-warming gift." Watkins smiled and said she'd already seen it. Her smile lingered for quite awhile as Lewis got ready to question her.

Things got a little heated a few minutes later, when Lewis began asking her about her request to Lay that another accounting firm be brought in to review the finances of Enron's off-books partnerships.

Did Watkins realize that it took the audit committee of the board to hire a new accounting firm? Lewis asked.

To hire a new accounting firm as auditor, Watkins replied, not to hire someone to review the partnership issue. Enron had, for example, hired PricewaterhouseCoopers to do some other accounting work, Lewis said.

Did she realize that Ken Lay could not bring in another accounting firm?

"That is not a true statement," she said. "He could hire whatever accounting firm he wanted."

Lewis, who kept mispronouncing the name of the accounting firm as "Price Coopers Waterhouse" said after that firm was hired, Enron's auditor, Arthur Andersen, refused to approve Enron's books.

"I'm not aware of it, and I don't believe that ever happened," Watkins shot back.

Later, in discussing the role of the Houston law firm Vinson & Elkins, Lewis asked if she agreed that V&E, which helped set up Enron's partnerships, is one of the most prominent law firms in America.

"Not anymore," she said.

March 15, 2006

*It's the Sherron Watkins show*

... And we're back. Sherron Watkins, who needs no introduction to Enronophiles, has resumed her testimony for the prosecution. Actually, it's more well-oil narrative. Watkins has been through this so many times, she doesn't seem to need to be asked a lot of questions. She's heard them all before.

Several times, prosecutor John Hueston has had to interrupt Watkins' monologues to ask questions that the government obviously thinks needs to be asked.

Nevertheless, Watkins' sincerity and concern come across well. She has been labeled a whistleblower, a term that she initially eschewed and later more or less accepted. Watkins wasn't a whistleblower. She was a company insider, just one who dared to try to speak the truth to upper management. She didn't want to alert outsiders to Enron's problems, she wanted to find a way to fix them quietly and get the company back on its feet.

To me, the most interesting part Watkins being on the stand isn't her testimony, it's the cross-examination. Ken Lay and Jeff Skilling have never had a chance to question her assertions. Those fireworks may start later this afternoon.

March 15, 2006

*Enron celebrity draws a crowd*

Sherron Watkins, whose memo to former Enron chairman Ken Lay in August 2001 sparked her career as author, consultant and Time's co-Person of the Year, is drawing a good crowd of spectators for her stint on the witness stand at the trial of Lay and Jeff Skilling. In fact, the overflow room hasn't been this full since Watkins' former boss, Andrew Fastow, testified last week.

Watkins already has told her story in a book, numerous media appearances, and testimony before Congress, so much of what she's saying isn't new. Watkins testimony is animated and articulate, the mark of someone who's comfortable in front of the camera, and she's running through her story with the ease of someone who's recited it often, which, of course, she has.

But for all those who believe that Arthur Andersen's approval of Enron's partnership deals, Watkins makes a good point. In talking to lawyers for Vinson & Elkins, the firm hired to investigate the claims she made in the memo to Lay, she told the the lawyers not to trust Andersen, Enron's accounting firm.

Even though she worked at Andersen for eight years and still felt a deep affinity for the firm -- "Mother Andersen," she called it -- she noted that Andersen's audits were suspect because of past accounting scandals at Waste Management and Sunbeam.

"We really couldn't hide behind the fact that they had approved these structures," Wakins said.

Meanwhile, Watkins testified that by late 2001, she was actively looking for another job. "I'd wanted to leave since I first saw these [partnership] structures," she said. She'd interviewed at companies such as Reliant, Dynegy and El Paso.

Talk about out of the frying pan ...

March 15, 2006

*More on executive pay*

The Wall Street Journal's Alan Murray has this interesting column ($) on the mounting concerns about executive pay. Murray focuses on how Home Depot changed the way it calculates pay for chief executive Robert Nardelli, essentially ensuring that Nardelli's pay would rise even as his company's performance fell.

Murray sums up the situation like this:

... Does he really deserve last year's total pay of $27 million-plus, including several million dollars to cover tax payments on a forgiven loan? His board may think so -- though it's worth noting that the board includes Home Depot co-founder Ken Langone, who headed the New York Stock Exchange's board compensation committee that decided Dick Grasso's pay.

Consider this: Before coming to Home Depot, Mr. Nardelli lost out to Jeff Immelt in the competition to run General Electric. Now he takes home a bigger paycheck than Mr. Immelt. Since joining Home Depot, he's underperformed rival Lowe's. Yet he makes more than Lowe's CEO. Little wonder he leads the hit list of overpaid CEOs assembled by Gerald McEntee's American Federation of State, County and Municipal Employees.

Seems like Home Depot's board has a little remodeling to do in the compensation department.

March 14, 2006

*Nelson's done, and he'll be a hard act to follow*

Pipeline worker Johnnie Nelson continued to inject a dose of reality into the Enron trial. When defense lawyer Mac Secrest told Nelson that the jury had already seen the entire tape of a speech Ken Lay gave to employees in October 2001, Nelson turned to the jury and said "I apologize."

Secrest pressed Nelson on whether as chief executive Ken Lay was allowed to be upbeat about the company's outlook, even if the company was facing problems.

"This tape didn't go to the general public, it went to the workers in the field," Nelson said. "All we wanted was the truth."

Nelson said he didn't know who Andy Fastow was at the time, and had never heard of the LJM partnerships, so when Lay told employees he'd personally looked into the partnerships issues and that everything had been handled properly, Nelson believed him.

> Secrest: "Is Ken Lay allowed to make a mistake?"
>
> Nelson: "Pretty big mistake.
>
> Secrest: "Does that make him a criminal?"
>
> Nelson: "I have my opinions."
>
> Secrest: "I know you do and I'll leave it at that."

Coming back to the issue of Lay's stock sales, Secrest, on re-cross, said Lay actually held on to his shares, and his only sales were to meet margin calls that didn't have to be disclosed. By holding his stock, Secrest said, Lay lost hundreds of millions of dollars.

"I'm heartbroken," Nelson said.

Nelson was a breath of fresh air, but he's already done. Now, Vince Kaminsky, a former Enron risk manager, is on the stand and giving a detailed explanation of hedging. To quote Nelson's comment about the employee video, "It's pretty boring."

March 14, 2006

*Not stamps and stationery*

Johnnie Nelson may not be the key witness in the government's case against Ken Lay and Jeff Skilling, but he's certainly the most colorful. Nelson worked in a pipeline field station in New Mexico, a remote Enron office that had no phone service or e-mail. When Enron's stock collapsed, "I lost everything," he said.

Nelson said he joined Enron in 1985 and that he trusted Ken Lay emphatically. In the past, when the company had struggled, Ken Lay was always good to his word and fixed the problem, Nelson said.

Nelson, who resembles rock star Bob Seger and who looks uncomfortable in a coat and tie, speaks in short, often blunt statements. Nelson said he didn't know Ken Lay was selling Enron stock in late 2001, and he wished he had.

"He's the flagship of the company," Nelson said. "If he's buying, we're buying. If he's selling, we're selling."

Later, under cross-examination from Lay's lawyer, Mac Secrest, Nelson said it didn't matter whether Lay was legally required to disclose the sales or not. It should have been disclosed to employees, Nelson argued.

Nelson's Joe Sixpack views are in sharp contrast to the past week of finance-heavy discussions. He's not a man who minces words. At one point, he answered a question from Secrest with obvious disdain.

"Was that not a fair question?" Secrest said.

"I don't think it was a fair question, but I answered it," Nelson responded.

Later, Nelson said he gave Lay a lot of credit when Enron's stock was rising, and he holds the former chief executive responsible for it's decline. "He violated my trust," Nelson said. "That's all I know."

Secrest asked if he thought a chief executive of a company the size of Enron should know about everything going on at the company. Nelson replied: "We're not talking about stamps and stationery, these were millions and millions of dollars."

In reviewing documents about the lock down that prevented Enron employees from selling stock, Secrest asked Nelson a yes-or-no question about what the document said. Nelson, though, offered a little more: "What it doesn't say is that the stock's in the toilet at this time."

Nelson said he put most of his 401(k) money in Enron stock in late 2001 because of Lay's comments, and because his co-workers urged him too. Under Secrest's questioning, Nelson said he didn't blame anybody else, because it was his decision.

"Ultimately, everybody has to take their own responsibility," Secrest said.

"That's why we're here," Nelson shot back.

March 14, 2006

*On Enron's payroll*

Dan Petrocelli, Jeff Skilling's lawyer, tried to undermine what may be one of the more damaging pieces of Chris Loehr's testimony: that he was paid by Enron while working at the LJM partnerships.

Petrocelli said Enron and LJM had a services contract under which LJM reimbursed Enron for certain expenses, including some salaries.

Loehr countered: "I was under the impression it did not cover myself and ... others. My understanding was that LJM was not reimbursing Enron for our salaries."

Loehr, by the way, came into LJM through Enron's rotation policy, in which it moved young analysts around to different divisions, and apparently, even into "independent" partnerships.

Loehr, despite his nervousness, is holding up pretty well under cross examination. His testimony has backed up a lot of what Andrew Fastow said last week. Meanwhile, Petrocelli has done little to impeach Loehr's credibility. The defense just passed the witness, and prosecutor John Hueston has begun redirect.

March 14, 2006

*How the Grinch stole Enron*

Dan Petrocelli is hammering a way at an increasingly shaky Chris Loehr. First, he has tried to convince Loehr that the back dating of documents wasn't a crime, even though Loehr said he thought that was one of the crimes he committed at Enron/LJM. Petrocelli basically asserted that Loehr doesn't understand that back dating isn't crime. Having thus established the innocence of the government's witness, he then went on to impugn Loehr's character.

In his earlier testimony, Loehr used the term "Merry Christmas" in an email about "time machine documents" because the documents, written in March 2001 where documenting a deal from December 1999.

"So you're using a sacred word like 'Merry Christmas' to describe illegal activities?" Petrocelli bellowed.

This isn't a criminal conspiracy, it's a war against Christmas!

March 14, 2006

*Enron interlude: Northwest charging more for exit row seats*

Northwest Airlines is now charging a $15 premium for sitting in an exit row, according to

Terry Trippler at cheapseats.com. It's part of what Trippler predicts will be an "a la carte" pricing trend for airline services, such as beverages and check bags, by year's end. No word on how much they'll charge if you want a plane with wings. But you can bet all this factors into the airlines' push to loosen advertising rules.

March 14, 2006

*'Open and notorious'*

The government has passed the witness, and on cross-examination, defense attorney Dan Petrocelli is picking away at the credibility of investment analyst Chris Loehr. Petrocelli started out by noting that Loehr, who was paid by Enron but worked for the "independent" LJM partnerships, never mentioned the name of defendant Jeff Skilling in his direct testimony.

Loehr, who admitted to being "very nervous" about testifying, said he believed at the time that the deals he was doing for Enron and the LJM partnerships were wrong. Petrocelli asked him why he didn't hide any evidence or take other actions to help cover up the wrongdoing he apparently knew he was participating in.

"The conduct was fairly open and notorious," Loehr said. "It was no great secret what we were doing."

Petrocelli then presented Loehr's exit interview, from when he left Enron in August 2001. In listing things he liked about Enron, Loehr gave a "1," the highest score, for "honesty." Loehr explained he was referring to how his superiors, primarily Andrew Fastow and Michael Kopper, dealt with him.

"I believed Mr. Fastow was honest with me," Loehr said.

Petrocelli responded: "That's who you gave the highest rating for honesty to? Andy Fastow?"

In his exit interview, Loehr also said he enjoyed the deals he worked on, the very ones he now says were criminal.

"What I found interesting thing about the deals was that they were innovating and very complex," he said. "Over my time at Enron I realized that was more window dressing than anything else. There were side deals that usurped what was down on the paper."

Earlier, Loehr said he left Enron to go to business school, but he also had another reason:

"It seemed to me that Enron was getting more and more desperate. I wasn't sure that we were going to be able to solve the old problems that kept coming back or the new ones that were going to come up."

Petrocelli's attempts to impeach, or at least rattle, the witness, though, are ignoring the elephant in the courtroom: Loehr's earlier testimony about who signed his paycheck. If Enron was paying him, and he was handling deals for LJM that Enron directed, it's pretty hard to argue that LJM was independent.

March 14, 2006

*'Enron's dirtiest laundry'*

Chris Loehr told jurors that Andrew Fastow attempted to market assets in the Raptor partnerships to Enron competitors. The Raptors were partnerships set up to hedge Enron's money-losing assets. Loehr, who worked for the LJM partnerships that Fastow ran on the side and that set up the Raptors, said he was stunned when Fastow told him he was trying to sell some of the assets to El Paso Corp.

"I thought he was crazy," Loehr said. "This was Enron's dirtiest laundry." It didn't make sense to show a key competitor how Enron was hiding underperforming assets, Loehr said.

Loehr also said he believed the assets were unmarketable, which proved to be true. The discussions with El Paso were a "non-starter," he said.

Really, Fastow's title should have been chief landfill officer. Based on his testimony and Loehr's, it's clear Fastow's primary job was to take out Enron's garbage.

March 14, 2006

*Enron's time machine*

LJM partnership employee Chris Loehr said he spent 14 months working on recreating deal documents so that LJM could avoid paying taxes on an Enron-related transaction. Although the deal closed in December 1999, Loehr said he was still working on back-dated documents as late as March 2001. Around LJM, they became known as "time machine documents." In one e-mail, Loehr told a co-worker that "time travel takes its toll."

Prosecutor John Hueston then moved on to another topic, one that defense attorneys hammered on Andrew Fastow about last week: the global galactic agreement. Loehr said Fastow told him the document reflected an agreement he had with Enron's chief accounting officer, Rick Causey, to ensure LJM would not lose money on its investments.

"He described it to me as a written document," Loehr said, adding that he was told only Fastow and co-worker Michael Kopper had copies of the agreement.

March 14, 2006

*Money back guarantee*

Chris Loehr, who worked for the LJM partnerships, told jurors that in preparing documents for a proposed sale of Enron's Brazilian power plant to LJM, he wanted to insert language that reflected Enron's guarantee that LJM would not lose money. Loehr said he was told that if that language were included, Arthur Andersen wouldn't consider the deal a true sale.

"Mr. Fastow said it was OK to remove the language because he had received assurances that LJM would not lose money, even if it wasn't in the deal documents," Loehr said.

The power plant deal never went through. Fastow told Loehr that the footnotes in Enron's financial statements about deals with LJM were getting too long. The plan was for Fastow to sell LJM to Michael Kopper, so Enron would no longer have to disclose its LJM transactions. Then, the power plant deal would proceed, Loehr said.

Much of Loehr's testimony is buttressing things that Fastow already has said. Loehr told jurors that LJM did no due diligence on assets it bought from Enron because Fastow had received promises that Enron would guarantee the partnerships wouldn't lose money.

March 14, 2006

*'Enron always paid my salary'*

Chris Loehr was one of a handful of people who worked for the LJM partnerships run by Enron chief financial officer Andrew Fastow. During the past four days of testimony, Fastow talked a lot about how LJM wasn't the independent entity Enron wanted shareholders to believe.

Loehr, a graduate of Rice University, signed on with Enron in 1999, when he was 24. Loehr said he officially joined LJM in 2000, but he had worked on LJM projects as far back as 1999 when he was still an Enron employee.

Loehr is one of those rare government witnesses who doesn't have plea a deal with the government, yet he has an inside view of one of Enron's key financial warehouses. For more on Loehr, see Mary Flood's post on the TrialWatch blog.

Visibly nervous on the witness stand, Loehr described how initially he would split his time between Enron and LJM, but as time went on, he spent more and more of his time working for LJM.

Asked by prosecutor John Hueston who signed his pay check, Loehr responded: "Enron always paid my salary."

So much for LJM's independence.

UPDATE: Loehr has not pleaded guilty or been charged with any crimes. He does have a non-prosecution agreement with the government.

March 13, 2006

*Click to CLECs*

After my column on Sunday that mentioned competitive local exchange carriers, a number of folks have called wanting to know how to find alternatives to AT&T's local phone service. The Texas Public Utility Commission provides this handy list of CLECs that operate in the state, with links to telephone numbers and addresses.

March 13, 2006

*Closing with an unanswered question*

Wrapping up his recross of Andy Fastow, Mike Ramsey ended with a question:

"Can you think of one reason why your testimony is credible?" Before Fastow could answer, prosecutors objected to the question as argumentative. Judge Sim Lake sustained the objection, which ended Fastow's testimony in this trial.

But in all likelihood, Ramsey never intended Fastow to answer. He wanted that question to linger in jurors' minds, to be the last thought on Fastow's testimony.

That's it for today.

March 13, 2006

*Sowing the seeds of doubt*

Defense lawyers' job in a criminal trial is to sow the seeds of reasonable doubt. Jeff Skilling's lawyer, Dan Petrocelli, just provided a little demonstration of how that works. In his re-cross of Andy Fastow, a man who has admitted to lying repeatedly to his friends, family and co-workers, Petrocelli pressed him for documentation or even hand-written notes on promises from Skilling that Fastow's LJM partnerships would not lose money in its deals with Enron.

Fastow said he didn't think any existed.

"So," Petrocelli said, "we have nothing but your recollection and your honesty to rely on?" He let the word "honesty" rollover the courtroom like, to paraphrase the old John Hiatt song, a slow-moving cold-front.

"That's correct," Fastow replied.

Soon after, Petrocelli handed Fastow off for another bludgeoning by Lay's attorney, Mike Ramsey.

March 13, 2006

*An Enron interlude: Shred it or dread it*

We're on audio silence while there's a bench conference with the lawyers in the Enron trial. As we wait for things to resume, I stumbled across this post at cockeyed.com. If you've ever received an unsolicited credit card application in the mail -- and who hasn't? -- it's worth reading. Very disturbing.

March 13, 2006

*What was that all about?*

So what was the point of Mike Ramsey's battering cross-examination of Andy Fastow? I pondered that during the short break that just concluded. Ramsey really didn't score a lot of points for his client, although he did get to dangle a lot of terms like "exaggerate" and "sinister" in front of the jury.

In a hallway discussion with other reporters, an interesting point was raised. Maybe Ramsey was trying to draw forth Fastow's well-known temper. If that was the strategy, it clearly didn't work.

March 13, 2006

*Mike Ramsey, legal ramrod*

Ken Lay's attorney, Mike Ramsey, has been battering Andy Fastow in a questioning style that seems like legal pugilism. He doesn't ask questions so much as hammer at a point. Here's one example, referring to Enron whistleblower Sherron Wakins:

Ramsey: "Ms. Watkins really did not like you sir, did she?"

Fastow: "I don't know."

Ramsey: "She didn't!"

Ramsey continually pounded on Fastow for not knowing things. He frequently laced his comments with phrases like "you were the CFO of a major corporation."

He used terms like "cockamamie" to describe Fastow's earlier testimony.

In discussing questions the Wall Street Journal submitted to Enron in September 2001 about the relationship with Fastow's LJM partnerships, Ramsey picked out one of the questions about the compensation of Fastow and his partners made from LJM:

Ramsey: "That question struck terror in your heart, didn't it sir?"

Fastow: "I don't recall that that question struck terror in my heart."

Then things started to get testy. Fastow, who says he has a hearing problem, has frequently asked Ramsey to repeat questions. At one point, in disagreeing with one of Ramsey's statement/questions, Fastow began, "With all due respect..."

"I don't need your respect, just answer the question," Ramsey snapped.

Judge Sim Lake intervened, telling Ramsey to "calm down."

In asking another question, Ramsey was practically shouting, and Fastow still had trouble understanding him.

"You really can't hear me?" Ramsey snapped.

"Feel free to ask your client," Fastow replied. "I really do have a hearing problem. I don't mean to be rude by asking you to repeat your question."

In discussing the LJM partnerships and whether they were independent, Fastow said he didn't operate them independently.

Ramsey erupted: "You have practiced that speech on several occasions before you came into this courtroom, have you not sir?"

"No sir," Fastow replied.

And that's kind of how it went. Ramsey scored some points for getting Fastow to admit that he couldn't recall any deals in which LJM made money and Enron lost money, but that really wasn't the point. The transactions were designed for LJM to make money and for Enron to use them to boost earnings.

All in all, it was an afternoon full of sound and fury, but little illumination. Ramsey just passed the witness, so after a short break, the government will get to follow up with Fastow on redirect.

March 13, 2006

*Bungle in the jungle*

Despite defense attorney Mike Ramsey's attempts to berate Andy Fastow over his testimony about the Dabhol power plant in India, one former Enron employee tells me that the story was widely circulated within Enron. I got this message just a few minutes ago, after the former employee read this earlier post.

I am amazed that Andrew Fastow was told something that I also heard around the office. Right before Enron filed for bankruptcy it was a well circulated story that if the Power Plant went dead it would be a big heap of rusting metal and that the jungle would indeed encroach upon it. At the time the prevailing opinion was that the expertise to run the plant was going to shrivel up and die if Enron (Lay) did not come to a pricing agreement with the Indian government.

I don't have many more details, I just thought you might want to know that, in this case, Fastow is being honest, even if he is a huge crook and deserves a lot more time than he will actually get.

In court, that's called hearsay, and it isn't admissible as evidence, but it's interesting nonetheless.

March 13, 2006

*Dabhol trouble*

Mike Ramsey took issue with Andy Fastow's testimony from last week about the troubled Dabhol power plant in India. Fastow had testified that Dahbol had such problems that Enron officials discussed shutting down the plant. Fastow said he was told that if that happened, the jungle would encroach on the plant and it would rust and deteriorate.

Ramsey called that description a "massive exaggeration." He demanded to know who told Fastow the jungle would move in "and vines would wrap around it." Fastow said he was told that by an Enron executive in a meeting in Ken Lay's office. Again, Ramsey demanded to know which executive told him.

"I want attribution if you can give it to me," Ramsey said, his voice rising. Fastow again said he couldn't recall who told him.

"You made it up, didn't you, Mr. Fastow, in order to exaggerate?"

"No sir, I did not," Fastow replied.

Fastow said that he was told that shutting down the plant was a concern because of the cost of restarting it, and because without proper maintenance it would deteriorate.

Ramsey questioned whether the other partners in the deal, including General Electric and some 30 banks worldwide would have allowed the jungle to reclaim a $1 billion power plant.

Ramsey then began what amounted to ridicule. When Fastow would talk about what was said at the meeting, Ramsey would simply say "the jungle," or "the vines," his voice dripping with disdain.

That continued until the prosecution objected, and Judge Sim Lake ordered Ramsey to move on.

March 13, 2006

*The Truman show*

Ken Lay's attorney, Mike Ramsey, has taken over the cross-examination of Andrew Fastow. He started out with what has become the routine recitation that Fastow is a liar. He pointed out that Fastow approached Lay in August 2001, just days after Lay returned as chief executive, with a request to renegotiate his contract. Fastow, Ramsey said, was lying to Lay and the board even as he was "stealing from the house."

Then Ramsey went on to discuss the talks Fastow held with Goldman Sachs in late 2001 to look at a massive restructuring of Enron. That deal, apparently, became known as Project Truman.

Fastow has said he chose Goldman Sachs because it was one of the few Wall Street investment banks that wasn't a major lender to Enron. Ramsey, however, argued that Goldman was Enron's biggest broker of commercial paper, which is a fancy expression for short-term loans.

"Didn't it at least cross your mind a little bit, that if we tell our major commercial paper brokers [about the company's financial crisis], the paper would dry up overnight?" Ramsey asked.

Fastow said he was more concerned with the firms that controlled Enron's credit ratings and long-term borrowings.

Ramsey went on to argue that Goldman, in fact, approached Enron because it thought Enron's stock was undervalued, leaving Enron vulnerable to a hostile takeover. Fastow said he didn't remember it that way.

Ramsey seems to be making the case that Fastow, because he was stealing from the company and lying to everybody, basically didn't make any meaningful attempt to save the company. After several months of discussion, Enron never engaged Goldman to advise on any restructuring.

Fastow insisted he believed the restructuring was vital to Enron's survival. "But you didn't do anything about it," Ramsey said.

March 13, 2006

*Andy, you're doing a heckuva job*

When the Wall Street Journal began pressing Enron about Andy Fastow's dual role as chief financial officer and general partner of the LJM partnerships in the fall of 2001, Enron's board threw their support behind Fastow. Herbert "Pug" Winokur called Fastow to tell him the board backed him. Winokur even offered to write a letter to the paper's editor saying all the LJM transactions had the board's support, according to notes Fastow took of the phone call.

The notes were presented as evidence by defense attorney Dan Petrocelli, who's trying to show that Jeff Skilling and Ken Lay believed the LJM deals were legitimate.

Skilling himself, who by that time had left the company, called Fastow to say he knew about the LJM transactions, that they were fully disclosed, and he didn't understand why Enron wasn't explaining its side of the story to the Journal.

A few days later, again according to notes Fastow took of conversations, Lay came into his office after a board meeting. "Lay told me that the board was unanimous and adamant that I remain as CFO," Fastow wrote.

Skilling then called a second time again saying he knew "100 percent" of everything LJM was doing and, according to Fastow's notes, said "The shareholders should give us medals for doing all these deals."

Hmmm. Somehow, I don't think that's exactly what shareholders had in mind....

More to the point, though, I'm not sure it's in the defense's best interest to present evidence that Skilling and Lay knew what LJM was doing.

March 13, 2006

*To every season, a project*

More project names are being bandied about. First, defense attorney Dan Petrocelli asked Andy Fastow about the Chewco partnership, which Fastow admitted was named after the Star Wars character Chewbacca. Fastow acknowledged he's a fan of the films.

We've since returned to discussions of Project Summer, a failed attempt by Enron to sell international assets in 2001. When Project Summer didn't work out, it was replaced with another sales effort, dubbed Project Fall. Fastow said he knew little about either of these. Petrocelli is trying to show that the global galactic list was actually a cheat sheet for these projects.

I guess the argument would be that all of this somehow made the deals legitimate. The problem is that Project Summer involved buying assets back from Fastow's LJM partnerships. That implies, once again, that Enron neither viewed nor treated LJM as an independent entity.

When Fastow said he knew little about Project Fall other than having heard the name, Petrocelli pressed on. What about a Project George?

"I don't recall a project called George," Fastow replied. He offered that he did, however, recall a project called "California."

George? Who names a project George?

March 13, 2006

*Not so Fastow*

Andrew Fastow returns to the witness stand this morning for the second round of cross-examination, this time by Ken Lay's attorney Mike Ramsey. Ramsey has said he expects to finish up in about three hours. Then, the prosecution will have a chance to ask Fastow more questions on redirect.

I got an email from a reader last week who made a few suggestions for what prosecutors might ask Fastow. I've tweaked them a little, but they were pretty good, so I'll pass them on:

1. If Enron had real earnings and was honest in its reporting, would there have been any reason to ask you to hide losses and create fictional earnings?

2. Did senior management ever express concern that by asking you to do this they were deceiving the public?

3. If you hadn't been asked to set up these partnerships, would you have been able to commit the personal crimes you now admit to? In other words, would you have had the same opportunity to steal from Enron?

Fastow just took his seat. We're about to get underway, so stay tuned.

UPDATE: The proceedings started with a bit of a surprise. Jeff Skilling's lawyer, Dan Petrocelli, who passed the witness at the end of court Thursday, basically took him back. Petrocelli told Judge Sim

Lake he had a few more questions for Fastow this morning.

March 10, 2006

*Weekend reading assignment*

This proved to be a popular feature last week to fill the void left by no Enron trial on Fridays, so I thought we'd give it another shot. Since most of the week was dominated by the long-awaited testimony of former chief financial officer Andrew Fastow (see my columns here and here), I've selected this classic piece from CFO Magazine in 1999.

When Andrew S. Fastow, the 37-year-old CFO of Enron Corp., boasts that "our story is one of a kind," he's not kidding. In just 14 years, Enron has grown from a heavily regulated domestic natural-gas pipeline business to a fully integrated global energy company with thriving activities in natural gas, electricity, infrastructure development, marketing and trading, energy financing, and risk management. And much of that growth has been fueled by unique financing techniques pioneered by Fastow.

The article was written in conjunction with an Excellence Award that the magazine bestowed on Fastow, something it stopped doing in part because too many of the recipients wound up either in prison or facing charges.

Still, the article makes interesting reading in light of this week's testimony. To the magazine's credit, it came back in 2004 with this article asking if the 10-year sentence in Fastow's plea deal was enough prison time for his crimes.

Please discuss.

March 10, 2006

*The bigger cost of the UAE ports deal*

The decision to scuttle the DP World ports deal is an example of political posturing overshadowing free trade.

I've already weighed in the ports deal, so I won't belabor the point. In the name of political expediency, it's now dead. Before we tap-dance on its grave though, it's worth considering the broader implications the deal's death on our standing in the global economy.

Fortune magazine European editor Nelson Schwartz files this article today analyzing the impact on U.S. exporters. According to the story, the biggest short-term loser may be Boeing:

Indeed, The Hill, a Washington newspaper that covers Congress, reported that Dubai's royal family is "furious at the hostility both Republicans and Democrats on Capitol Hill have shown toward the deal."

And with Boeing hoping to land a major order for its new 787 Dreamliner with Dubai-based airline Emirates down the road, the stakes are high. Elsewhere in the region, the UAE's Etihad Airways has already ordered more than $1 billion worth of

777s, and Egyptair and Royal Jordanian are longtime Boeing buyers.

Oh well, what's another billion or two piled on the $767 billion trade deficit if it makes us feel safer?

March 09, 2006

*Then again, maybe not*

I blogged too soon.

Defense attorney Dan Petrocelli may have been winding down, but he wasn't stalling. He just passed questioning of Andrew Fastow to Ken Lay's attorney, Mike Ramsey. Ramsey will pick up on Monday.

"I fulfilled my bear hug to Mr. Ramsey," Petrocelli said, a reference to Fastow's earlier testimony.

Ramsey indicated he'd only have a few hours of questions for Fastow.

March 09, 2006

*Winding down for the weekend*

We've gone from Latin to obscure finance. Defense attorney Dan Petrocelli seems to be winding down. Since there's no court tomorrow, he clearly wants to continue his cross-examination of Andy Fastow on Monday. Perhaps he wants the weekend to regroup. Fastow has help up remarkably well on the stand, and the defense so far doesn't seem to have scored many points. At the moment we're debating a stock chart for the telecom start up Avici, in which Enron has an investment.

March 09, 2006

*Quid pro Petro*

Defense lawyer Dan Petrocelli is now questioning Andy Fastow about some of the deals between the LJM partnerships and Enron. He referred to testimony Fastow gave Tuesday in which the former chief financial officer discussed a "quid pro quo."

That's a Latin term meaning "this for that," Petrocelli said. He then repeated the phrase several times.

"I understand from your testimony the other day that the quid is that you get $41 million back and the quo is Enron gets to hedge assets," Petrocelli said.

Fastow had testified that the quid pro quo between Enron and LJM was that LJM got its profits up front, and in exchange, Enron could hedge any assets it wanted through LJM.

Petrocelli argued there was nothing secret about the arrangement because it was disclosed to the board.

"If the board was made aware of the quid, there could be no quo," he said.

Fastow countered: "We wouldn't have had a quo without a quid."

Follow that? The jury probably didn't either.

March 09, 2006

*Necktie redux*

Usually, the Chronicle's Mary Flood is the blogger who notes what people are wearing in the courtroom. This time, however, I got the drop on her. Andrew Fastow is wearing the same tie, and what looks like the same suit, as yesterday.

Fastow hasn't had a proper job in more than four years, so maybe his wardrobe's getting a little sparse.

On the other hand, he was wearing a different tie on Tuesday, his first day on the witness stand.

March 09, 2006

*He needed a hug*

Under cross-examination, defense lawyer Dan Petrocelli has been trying to pick apart the "bear hug" agreement involving the LJM partnership's purchase of the troubled Cuiaba power plant in Brazil. Andrew Fastow, Enron's former chief financial officer, who also ran LJM, said he agreed to take on the project only because Jeff Skilling promised him LJM would not take a loss on the deal. That's what known in the finance world as a "bear hug."

Without the bear hug, he would have never taken on the troubled Cuiaba project, Fastow said.

Petrocelli ran through a number of the deal documents, pointing out that none of them mentioned such a side deal between Fastow and Skilling. Petrocelli pressed Fastow on whether there was risk to LJM by doing the deal, but Fastow didn't budge from his earlier testimony:

> "I believe the only risk I was taking was whether Mr. Skilling would live up to his obligation to make sure LJM was taken out of the deal without a loss."

Petrocelli spent a lot of time discussing the word "obligation" and whether the bear hug was legally enforceable. Fastow said it probably wasn't and he had no intention of finding out. He simply took Skilling at his word.

Funny thing about those "secret side deals." They don't usually come with an extensive paper trail.

March 09, 2006

*Andy get your gun*

Jeff Skilling's lawyer, Dan Petrocelli, is hammering away and Andy Fastow for the second today. So far this morning, Petrocelli has walked Fastow, step by step, through the discovery of the "global galactic" agreement, a copy of which was found in Fastow's safe deposit box.

The agreement was actually a list of side deals that Fastow's LJM partnership was doing with Enron. It's the closest thing the prosecution has to an actual document linking Skilling, Enron's former chief executive, to the fraud that helped bring down the company.

Petrocelli questioned the timing of Fastow's discovery in the spring of 2004. At that time, Fastow's wife was facing charges of filing a false tax return. Fastow himself had entered a guilty plea. Petrocelli implied that the timing was designed to help Fastow's wife in her plea negotiations.

It's powerful stuff. The global galactic memo not only implicated Skilling, it also incriminated Rick Causey, who initialed the document and who was a co-defendant with Skilling and Ken Lay until a few weeks before this trial began. Causey wound up pleading guilty.

"You think this is some sort of smoking gun," Petrocelli said.

Which explains why he's spending so much time trying to discredit it. One problem with all this: Lea Fastow was sentenced to a year in prison. If it was a smoking gun, it apparently fired blanks, at least when it was in Fastow's hands.

March 09, 2006

*Less Lay, more Skilling*

Forbes' Dan Fisher once again has some insightful analysis into the Enron trial proceedings, which is impressive because he's writing about the trial from more than 1,000 miles away.

Fastow's job was to confirm those previous reports--and drag Lay into the same circle of knowledge. If prosecutors can convince jurors that Skilling and Lay knew Enron was skidding toward collapse, it's a small additional step to convict them both of fraud.

Enron is "a classic pyramid case" with little direct evidence such as incriminating documents against the top executives, says John Carney, a lawyer with Baker & Hostedtler who as a federal prosecutor last year convicted former Cendant vice chairman E. Kirk Shelton on 12 counts of fraud (the jury hung on co-defendant Walter Forbes). The government instead must rely on eyewitnesses and Skilling participated in more meetings with underlings -- and potential witnesses for the prosecution -- than Lay.

"The challenge for prosecutors is to convince the jury that Skilling is guilty," Carney says. "Then when you have witnesses like Fastow testify against Lay, the jury believes them because they already believe Skilling is guilty.

That said, the lack of testimony against Lay so far in this trial has been striking. While Fastow and other witnesses have shown acts of commission by Skilling -- things he said in meetings, his support of using partnerships to goose earnings, misleading statements to analysts -- most of the testimony against Lay has focused on omission. That is, that Lay knew what was happening at Enron but didn't do anything to stop it.

Fastow is on the stand again this morning, as Skilling's lawyer, Dan Petrocelli, continues his cross examination. Petrocelli may hand him off to Lay's attorney, Mike Ramsey, later today.

March 09, 2006

### *A ricochet of my own*

Reporters have begun filing into the fourth-floor media room this morning. As usual, the pre-trial hour is spent jockeying for electric outlets to plug in laptop computers. The room is an unused bankruptcy court. I sit in the front row of what would be the jury box, along with other reporters from the Chron and the Associated Press.

The row behind us is dominated by TV folks, who tend to come in later and forage for outlets. AP reporter Kristen Hays has a semi-circular outlet strip with eight plug-ins that we've dubbed "The Taco," which is the primary source of power for our part of the room. Yesterday, with the room full for Andy Fastow's testimony, electric demand was so great we had to plug a second strip into The Taco.

Perhaps I've been spending too much time listening to Enron testimony, but it occurred to me that I could make a little extra change if I could divert power from the Taco and sell it back to the TV reporters behind me.

Grandma Millie lives!

March 08, 2006

*Global galactic in a box*

The most grueling day of testimony so far at the Enron Trial has concluded with defense lawyer Dan Petrocelli in the middle of questioning Andy Fastow about what he did with a copy of the "global galactic" agreement. That's the handwritten sheet that outlined all the side deals Fastow's partnerships were doing with Enron. Fastow destroyed the original, but the copy wound up in a safety deposit box, where his wife found it years later. He says he doesn't recall how it got there.

That's all for today. Look for more blistering cross-examination tomorrow.

March 08, 2006

*Words of his own*

Earlier today, defense lawyer Dan Petrocelli accused witness Andy Fastow of using charged words in his testimony yesterday. He argued that by using words like "sham" and "hiding assets," Fastow was trying to create an image in the jury's mind.

Since then, I've been keeping a little tally of my own on Petrocelli, who's known for using pretty jazzy words himself. Here's a sampling:

ripped off

cabal

"the CFO of the year sitting in the Cayman Islands planning fraud"

siphon off

market yourself as player

"bought the treasurer of Enron with a million dollars of stolen money"

secret spreadsheet

partner in crime

"used Michael Kopper as a front."

secret partner

and perhaps my favorite...

divvying up the booty

March 08, 2006

*'I stole,' 'we stole,' we all stole from Enron*

Andy Fastow's afternoon cross-examination has been largely polite, but things are heating up again, with Fastow and defense lawyer Dan Petrocelli talking over each other. Petrocelli accused Fastow of going out of his way in his answers to convince the jury that defendant Jeff Skilling is guilty.

Fastow acknowledged stealing from the company through side deals, but he said other senior managers at Enron were stealing, too:

"When you misrepresent the nature of you company, when you inflate earnings, when you hide losses...that is stealing. I stole one way -- and I stole that way -- all I'm saying is that we stole. Many things we did were legal, but many things we did were illegal that allowed us to steal from Enron and its shareholders."

Petrocelli pressed on, saying that Fastow knew "when the history books were written" that Fastow's name would be associated with Enron's collapse. Petrocelli argued that Fastow wants to see Skilling's name there, too.

Fastow replied:

> "You know what I'd like written on that page? That I had the character to admit what I've done wrong...I can't undo the past. I'm ashamed of the past. What I did was reprehensible. It's not easy to look at yourself and to recognize that about yourself and to admit it. It took me a long time to do that. I've destroyed my life."

I'm not sure this is helping Petrocelli's client much.

March 08, 2006

*RADR, love and a 'hole in the law'*

In testimony just before the noon break, Andy Fastow showed how he was willing to use his own family and friends to enrich himself. In discussing a partnership known as RADR, Fastow said Enron wanted to sell some wind turbines to a third party but still control the assets. Fastow said he enlisted William Dodson, the domestic partner of his associate Michael Kopper.

If Kopper and Dodson had been married, Dodson couldn't have been considered a third party under the law, Fastow said. Texas law, though, doesn't recognize same-sex unions.

"Under Texas law, Mr. Dotson wasn't recognized as his spouse," Fastow said. "Technically, it worked under the law."

When he told Jeff Skilling about the arrangement, Skilling "thought it was great. He had a little laugh that there was this hole in the law."

Meanwhile, Fastow developed a system by which he, too, could particpate in the RADR deal. He enlisted his wife and sons to serve as the financial conduit for his ill-gotten gains.

"I directed my wife to make a loan to Mr. Kopper to invest in the RADR transaction," Fastow said. The loan was repaid at a high rate of interest and made through a series of checks that Kopper wrote to Fastow's wife and young children, which were characterized as gifts.

Fastow's composure seemed to crack as he looked at the checks written to his sons and told prosecutor John Hueston that they were, in fact, RADR proceeds.

March 08, 2006

*'I lied to Enron'*

Andy Fastow wasn't as much a 'hero to Enron' as he originally portrayed himself. He noted that he set up another partnership, called Southampton, with other Enron employees, including former Treasurer Ben Glisan.

As head of LJM, Fastow was looking to unwind a transaction that required Enron to pay a fee to the banks who were LJM's limited partners. One of the banks was willing to accept $1 million, but Fastow said he told former Enron Chief Accounting Officer Rick Causey the banks wanted $20 million.

Fastow said he steered the $19 million difference into Southampton. Fastow said he then set up charitable a foundation to hold the $4.5 million that was his portion of the deal. He brought his father in to run the foundation for a salary of $50,000 a year, which was pretty cheap by Enron standards.

"I lied to Enron," he said. "Those should have been funds that Enron was able to keep."

What was it that Jeff Skilling's lawyer, Dan Petrocelli, said the other day about no honor among thieves?

March 08, 2006

*Fastow fever builds*

As Andy Fastow's testimony has progressed, he's beginning to draw a crowd. The fourth floor overflow room, where us bloggers watch witness testimony on closed circuit TV while filing updates via WiFi connections, is now chock-full of spectators. Not all of them are reporters. At least one lawyer who wanted to watch the proceedings said he came down here because spectator seats in the courtroom are full.

There's now about 50 people in here. Since the end of opening arguments, the room has never had more than about a dozen reporters. Now, when Fastow says something interesting, the tapping of computer keyboards sounds like a plague of locusts . . . .

March 08, 2006

*'A hero for Enron'*

Testifying about the guaranteed nature of the Enron's deals with off-books partnerships, Andrew Fastow acknowledged that he took on deals because Jeff Skilling promised him the partnerships wouldn't lose money. Fastow, who was also Enron's chief financial officer, recounted a deal involving a Brazilian power plant known a Cuiaba that Enron wanted to sell.

At first, Fastow said, he told Jeff Skilling he didn't want his LJM partnership to do the deal. Asked why not, Fastow replied: "I don't know how graphic my language is allowed to be."

Prodded by prosecutor John Hueston to use the term he used at the time, Fastow said: "I told him it was a piece of shit and no one would buy it."

Fastow, though, said because of the fees from the deal, he knew he would make money by buying the plant, but he wanted Skilling to appreciate what he was doing:

"I was going to solve this problem, and I wanted Mr. Skilling to recognize just how big a favor I was doing so it would help me out later on."

"I thought I was being a hero for Enron. It would help Enron make its numbers, and if Enron made its numbers, its stock would go up. I was a big stockholder. If I helped Enron make its numbers I get a bigger bonus. At the time, it looked like I was helping myself and helping Enron."

Skilling eased his concerns, Fastow said. "He said 'don't worry about it, I'll take care of you on the project.'" Fastow said he took the comment to mean that Skilling would make sure LJM didn't lose money.

"We were helping each other," Fastow said of the symbiotic relationship between Enron and LJM. LJM was helping Enron make its numbers and

Enron was guaranteeing LJM a steady flow of deals and profits.

Enron liked to believe it was rewriting all the rules. Maybe it rewrote the definition of "hero" too.

March 08, 2006

*Enron got 'juiced,' investors got squeezed*

Andy Fastow, his salt-and-pepper hair now completely gray, told jurors that his partnership deals were approved at the highest levels of the company. His running of the partnerships was in direct violation of the company's ethics policy, so it required special authorization.

"It required approval from the office of the chairman," he said. Later, the board of directors approved a waiver of the policy, Fastow said, enabling him to create the partnership.

In later discussions with Jeff Skilling, Fastow said LJM1 was limited in the deals it could do because it had raised only $15 million. So a second fund was proposed a few months later. When they talked about setting up the new fund, Fastow said Skilling told him "Get me as much of that juice as you can."

Fastow explained:

"The juice was the equity [raised by the partnership], but we were using the equity to juice the earnings, to increase the earnings of Enron Corp. so we could report the numbers we wanted to report."

And how much juice are we talking about? By May of 2000, LJM2 had raised $386 million in capital commitments. That ensured Fastow $8 million in fees, plus a share of any profits.

Enron couldn't do these deals with other finance companies, Fastow said, because no one else would have entered into them. Besides, secrecy was paramount.

"We were using this to inflate our earnings, and I don't think we wanted to show people what we were doing."

It wasn't just juice. It was a magic potion of accounting.

March 08 2006

*No risk, big reward*

In his first few minutes on the stand, former Enron chief financial officer Andrew Fastow jumped right into the structure of his secret partnership deals. He discussed an arrangement under which he would personally profit from a partnership known as LJM1. He would make money from the deals LJM did with Enron, as well as from any rise in Enron's stock price.

"I considered there to be almost no risk to me. I thought it was pretty much pure upside."

Fastow said Jeff Skilling was unsure how the partnership should be disclosed to investors. Skilling was concerned that as a top officer of the company, Fastow's role in running the partnership would draw unwelcome scrutiny from the market.

"If dissected, people would see what the purpose of the partnership was, which was to mask, potentially, hundreds of millions of dollars in losses."

Fastow went on to discuss how the partnership deal was structured so that he would make money from fees regardless of whether the partnership made money or not.

A lot of people have waited a long time to hear those words.

March 07, 2006

*Enron's 'little truths'*

Kevin Hannon explained why he lied to both the Securities and Exchange Commission and the FBI prior to pleading guilty. Hannon said he tried to be truthful in what he was saying, but did so in such a way that he created a false impression about the state of Enron's operations.

"I thought if I tried to be literally correct in everything I was saying it wouldn't invite the scrutiny of the SEC or the FBI."

Prosecutor Cliff Stricklin pointed out that Hannon had gone from "being furious and rejecting plea deals to pleading guilty." Asked to explain why, Hannon simply said:

"I just realized I had to tell the truth, and what I had said where I tried to hold on to a little bit of truth, which we did so often at Enron...was intended to maintain the picture of success. It was not a success."

Hannon's done. Fastow just took the stand.

March 07, 2006

*Kicking off Fastow week*

The media overflow room is as full as its been since the first week of the Enron trial, though it's far from standing-room only. The media circus is back in town for the testimony of former Chief Financial Officer Andrew Fastow, who's expected to take the stand later this morning.

In the meantime, the defense continues its cross-examination of former broadband executive Kevin Hannon, whose expressionless monotone reminds me of that line in Springsteen's "Born in the USA" about "a dog that's been beat too much."

March 06, 2006

Slow ride to Fastow

The defense is taking its time working through the cross-examination of Kevin Hannon. With former Chief Financial Officer Andrew Fastow reviewing his testimony in a ready room upstairs, lawyers for Ken Lay and Jeff Skilling seem content to spend the rest of the day plodding through Hannon's recollection of old meetings.

Skilling's lawyer, Mark Holscher, is still picking at Hannon, and Team Lay still needs its shot. So don't look for Fastow before tomorrow.

March 06, 2006

*Hannon, with an aside of Rice*

Mark Holscher, an attorney for Jeff Skilling, used Kevin Hannon to attempt to undermine the testimony of an earlier witness, former Enron Broadband chief Ken Rice.

When Hannon discovered Rice had agreed to testify for the prosecution, "you were furious, weren't you?" Holscher asked.

"I was a lot of things," Hannon responded. "I was upset, I was concerned . . . about what he was going to say. I think that's normal. I was concerned about whether it was accurate."

"You were concerned Mr. Rice would present false testimony to a jury like this one?" Holscher responded.

Hannon hemmed and hawed and clarified, but the point was scored. The defense is trying to prompt the jury to question the testimony of one or both of the witnesses.

March 06, 2006

*Rage in the cage*

Defense attorneys are attempting to discredit the testimony of former Enron Broadband executive Kevin Hannon. As with other witnesses who agreed to cooperate with the government in exchange for lesser sentences, attorneys for Ken Lay and Jeff Skilling are questioning whether Hannon is telling the truth or simply trying to save his own skin.

Mark Holscher, an attorney for Skilling, asked Hannon about the day he was arrested and placed in a holding cell with another former broadband executive, Joe Hirko. Holscher described a scene in which Hannon was raging against the prosecutors for indicting him.

Hannon agreed that he was upset. Holscher pressed on, saying Hannon declared his innocence in "the cage."

Holscher: "You told all your co-defendants that you would spend your last penny proving your innocence."

Hannon: "I was very upset at the time. I might have said that."

Holscher said Hannon tried to rally Hirko and other defendants. "Do you recall saying 'we are going to fight this'?"

"No, I don't recall that. I don't think that's what I said," Hannon replied in the dull monotone that has marked most of his testimony.

March 06, 2006

### *More TV and me*

Update: Note the time has moved to Tuesday.

I'll kick off Fastow Week at the Enron trial with another appearance on Court TV's Catherine Crier Live, sometime between 4:30 p.m. and 5 p.m. Houston time on Tuesday. After several weeks of doing this by phone, I'll be back in front of the cameras. (I guess they finally got them fixed after my last appearance.) We may also do another live chat session following the broadcast, so feel free to join in with your questions.

March 06, 2006

### *Millie's revenge bittersweet*

A reader from Palo Alto, Calif., wrote to point out that Grandma Millie's revenge, which I discussed in this post and earlier column, isn't all that sweet. Many Californian's are still feeling the effects of the games Enron played with California's electricity market.

Thanks for finally writing about all of us Grandma Millie's but I don't feel avenged any more than the Enron employees who lost everything. We're all still waiting to see Enron held accountable for gleefully victimizing us while the Bush administration did its usual heckuva job protecting its citizens.

This California Grandma Millie was over-charged $8,500 in 2001 on a 2,000-square-foot house with no air conditioning. That's an additional $708 a month on top of our normally high rates. Our total utility bills equaled mortgages elsewhere.

You'll recall that 2001 was the year of the tech crash. One-third of Silicon Valley was unemployed. We refinanced our houses and depleted our assets to live while our jobs and benefits went to India, many never to return.

When I complained to the Federal Energy Commission that I wanted forms to get my $8,500 back and that I felt robbed, they helpfully replied, "I can see how you'd feel that way but there's no way we can help."

To add insult to injury, last year my town had to pay Enron $21.5 million for cancelling our gas and electric contracts with them. To cover that 2005 settlement our utility rates rose another 15 percent.

We're told we got away lucky because a trial would have opened us up to an even bigger settlement and much higher rates to pay for it.

Maybe when Enron is held accountable for victimizing us, and its Bush administration buddies are held accountable for allowing it, we can all go celebrate. An $8,500 tax credit would be a nice start.

March 03, 2006

*Weekend reading assignment*

There's no Enron trial today, and with Andy Fastow slated to appear on the witness stand next week, it seems like a good time to brush up on our Enron history.

Here's a link a reader sent me recently to piece he dug up from The New Yorker in 2002. It's written by Malcolm Gladwell, author of The Tipping Point and Blink, and it examines McKinsey & Co.'s role in fueling Enron's talent-obssessed culture and poses these questions:

The management of Enron, in other words, did exactly what the consultants at McKinsey said that companies ought to do in order to succeed in the modern economy. It hired and rewarded the very best and the very brightest -- and it is now in bankruptcy. The reasons for its collapse are complex, needless to say. But what if Enron failed not in spite of its talent mind-set but because of it? What if smart people are overrated?

Please discuss.

March 03, 2006

*The Dubai way*

What's become known as the "Dubai ports deal" continues to garner a lot of headlines. I weighed in last week on the $6.8 billion purchase of London-based Peninsular & Oriental Steam Navigation Co. by DP World, a shipping concern controlled by the government of the United Arab Emirates.

Today, Forbes.com has this piece, written by my former colleague David Andelman, that shows the DP World transaction is just one of a group of burgeoning international investments by the UAE. The story does a good job of laying out what it calls the jigsaw of UAE's investments around the world, including those in the U.S.

For another view on the political overtones, check out this column from Tuesday by the Washington Post's Richard Cohen, who's not normally a fan of Bush.

March 02, 2006

*Jim Cramer is right, but so am I*

In a follow up to our earlier exchange, CNBC "Mad Money" host Jim Cramer said he believes Christopher Cox, chairman of the Securities and Exchange Commission, was right to rebuke the enforcement staff over subpoenas issued to Cramer and other journalists. It's not unreasonable that Cox didn't know what front-line investigators in the San Franciso regional office were doing.

"I genuinely believe that these regional offices act on their own and then it gets to the commission level after months of research and that it doesn't surprise me one bit that Cox would no idea. I also think that no former chairman would have had any idea either."

On that point, we agree. And if I had an SEC subpoena sitting on my desk, as Cramer does, I would probably be glad for Cox's intervention, too. But that wasn't the point I was making in yesterday's column.

Back in August, soon after he became SEC chairman, Cox gave a speech to the SEC's staff in which he pledged to support them:

In my travels to other nations over the past two decades of my government service, there has been a recurrent theme: almost every nation I've visited seeks to emulate our capital markets. And yet, over the years, no nation has gotten it quite as right as ours. A big reason for that is the exceptionally capable and professional staff of this agency. You have helped make our markets the envy of the world.

But certainly, other nations have capable people as well. So why is it that our markets are the gold standard? It boils down to trust. Investor confidence. The integrity of the system. The world has faith in our markets because it has faith in the integrity of the people minding the store. You. Most investors will never know your names, but the world knows your work. Each one of you is part of this agency's stellar reputation.

That is why I pledge to go to bat for you. I'm not talking only pay and benefits; I'm talking about an entire climate -- the kind of work you do, how you do it, and why you do it. You are smart people who deserve to be respected, appreciated, and listened to. I pledge to do that.

Now, let's assume Cox meant what he said, and let's assume he believes the investigators in San Francisco made a mistake in issuing subpoenas to journalists. What would a good chairman do? He'd issue a press release that says, in effect, "we are concerned about this and we will hold off enforcing these subpoenas until we can review the situation."

That's not what he did. He issued a statement that hung his enforcement staff out to dry.

What will the effect of such a rebuke be? If you're an SEC enforcement attorney in a regional office, what message are you going to take from this? Which brings me back to the original point I made in my column yesterday: while he may appear to side with reporters, Cox is using this situation to play politics and stifle corporate reform efforts.

Cox and the commission are now left with two choices, both bad for investors: they can enforce the subpoenas, or they can undermine the enforcement staff. Either way, the public interest is sacrificed.

That is why Cox doesn't deserve to keep his job.

March 02, 2006

Crossing Delainey

I'm not in court this morning, but I noticed this item from our TrialWatch blog involving Dan Petrocelli's cross-examination of Dave Delainey. It relates to the March 29, 2001, meeting I wrote about yesterday in which Delainey said he was uncomfortable with moving losses from Enron's retail division into its profitable wholesale trading business.

The meeting stemmed from concerns that a surcharge by the California Public Utility Commission would trigger a $200 million loss for Enron's retail electric business. Under cross this morning, more details emerged:

However, [Delainey] acknowledged in court today he knew of no documents showing the loss and that he was working off oral statements by two top accountants, Wesley Colwell and Rick Causey.

Petrocelli showed Delainey an e-mail dated April 20, 2001, created by a team of Enron accountants and risk managers that listed five different analyses of the surcharge's effects.

Delainey said he never had seen it before and that the only scenario he knew was the one that resulted in a $200 million loss, which was one of the five listed. Delainey said the fear of that loss prompted Enron Energy Services to move money-losing parts into profitable Enron North America to illegally hide the financial hit on March 29.

[snip]

Petrocelli asked Delainey if he had any further knowledge what happened "to this so-called loss" after the decision was made March 29 to move part of EES to ENA, noting that one of the scenarios actually resulted in a gain as a result of the CPUC charge.

"If, in fact, scenario No. 5 of plus-$3 million was considered an appropriate outcome, there was no $200 million loss to hide and thus no fraud to engage in?" Petrocelli said.

That's an interesting view of accounting. It's OK to cook to the books, to shift stuff around and deceive investors, as long as there's not a loss. It is exactly the mindset that got Enron into so much trouble: all profits, regardless of how they're derived, are good.

Can anyone say Valhalla?

March 02, 2006

*Maybe I didn't make myself clear*

I was a little surprised by the outpouring of emails I received after my column yesterday calling for Christopher Cox, the chairman of the Securities and Exchange Commission, to resign. Most of them were from supporters of Overstock.com, which as I noted is waging a war of words with short sellers.

Several business journalists, including Herb Greenberg of Marketwatch.com and Jim Cramer of CNBC's "Mad Money" are, according to this group, in league with the shorts.

Such claims are common in these battles. I myself have, in a previous job in which I often wrote about penny stock fraud, been accused of the same thing. I haven't dug into the Overstock case, but a lot of t he messages have an all-too-familiar theme: the evil shorts are in league with business reporters, the

SEC's in on it too, if you dig deep enough you'll find the real scandal, etc.

This is the stock and trade of the financial message board crowd. I was once berated for not believing that a company could turn dirt into gold. Now it's possible that the Overstock case is as different as all the supporters claim, but as I've said, I've heard all this before.

Tom Kirkendall over at Houston's Clear Thinkers says my column seems to conflict with an earlier piece I did on short sellers, so let me try to clarify.

While there are certainly abusive short sellers, generally I believe they provide an important check on the market. To the extent that their information is valid, they can be -- and are -- a valuable source for journalists and the SEC. But since most shorts won't be quoted by name, their information has to stand on its own merits.

So the point of my column was not that the SEC should subpoena Greenberg et. al., my point was that Cox, with his public rebuke of the enforcement staff, was being disingenuous. He either knew about the subpoenas and is now trying to save face, or he's using the whole situation to play politics, taking up the cause of other commissioners who have been trying to stifle the enforcement division for years. I suspect it's the latter, in which case Greenberg, Cramer and everyone who's rallied to their defense are simply pawns in his political game.

I don't know Herb Greenberg. We've met briefly a couple of times, but I've read his column for years. Herb's job is to inject truth into a segment of the market where truth gets manipulated even more than usual in the business world. I don't want to see the SEC, which generally favors transparency, working against that. So I'm glad the subpoenas are being reviewed. I just wish it was for the right reasons.

I hope that clears things up.

UPDATE: Former BusinessWeek reporter Gary Weiss, author of the upcoming Wall Street Versus America also disagrees with me.

> Loren Steffy has a slightly different take on the foregoing in the Houston Chronicle. Steffy more or less says that Chris Cox is a spineless political hack, and calls for his resignation. "With journalists rallying to Greenberg's defense, he can look like a champion of free speech while heaping public humiliation on the enforcement division," he says.

I think this criticism is misdirected. The problem is not Cox caving in to pressure to more or less halt a stupid set of subpoenas. The problem is what appears to be, from all indications, a dumb SEC investigation.

UPDATE2: I got this email last night from Cramer:

> As someone who got the subpoena I could not disagree with you more about SEC Chief Cox. He is doing a very fine job; the idea that he would actually know about what one of the offices within the SEC is doing at the ground level -- rogue or not -- is preposterous. The fact that when he heard about the travesties he spoke out immediately is a testament to

how GOOD he is, not why he should go. Wrong takeaway my friend, wrong takeaway. The issue here is strictly one of whether to take the word of a ceo who has repeatedly overpromised and underdelivered versus journalists who are wise to his game. That's all there is, and the SEC in San Francisco simply sided with the CEO who has driven his company into the ground rather than the journalists who were smart enough to see it coming. I think if the SEC in San Francisco had done more homework it would have reached a different conclusion and pursued the wrongdoers instead of those who would point out such behavior.

But then again, Patrick Bryne is very persuasive, and all we have on our side are the facts

March 01, 2006

*Grandma Millie's revenge*

In listening to Dave Delainey's testimony, an interesting point emerges. Much of Delainey's testimony has focused on the March 29, 2001, meeting in which Jeff Skilling, Delainey, Rick Causey and others discussed moving losses from Enron Energy Services into the company's profitable trading business. The move was designed to mask the losses from Wall Street analysts.

A crisis had emerged two days before when Enron determined an electricity surcharge imposed by the California Public Utilities Commission resulted in an immediate $200 million loss for the company. With just a few days left in the first quarter, it would mean a $140 million net loss if something weren't done about it.

Now, EES may have had losses it needed to hide anyway, but the fact is that the sudden appearance of the $200 million loss forced the company's hand. The CPUC's timing, it turns out, was impeccable, because coming so close to the end of the quarter, it prompted a bit of a panic at Enron. For all its complaining about Enron's tactics, it seems the CPUC struck back rather effectively.

The panic over the surprise loss led to the decision to shift the losses, which is becoming one of the key transactions under scrutiny in this trial so far.

While the California energy crisis may have been good for Enron's trading division, it clearly hurt its retail business, and ultimately may hurt the defense of Ken Lay and Jeff Skilling. That must provide some satisfaction for Grandma Millie and other victims of the crisis.

March 01, 2006

### *Petrocelli rips into Delainey*

After a break for lunch, Jeff Skilling's lawyer, Dan Petrocelli, launched into a scathing cross-examination of Dave Delainey, who ran Enron Energy Services. He started out by repeatedly using the words "lie" and "lied" to describe Delainey's actions.

Yesterday, Delainey testified that he had reservations about a March 29, 2001, meeting where he, Skilling and others discussed folding the money-losing parts of EES into Enron's profitable trading business.

Petrocelli questioned why, since Delainey admitted he had lied to employees and shareholders at various times during the previous year, he would have gotten cold feet about the deal.

"You were in a conspiracy for a year," he said. "What's another fraud?"

Delainey replied: "In my memory, that was just about as bad as it can get, and about as brazen it can get."

Petrocelli: "By this point, you were a full-fledged member of the Enron conspiracy. You're using this conspiracy to climb up the corporate ladder. Why would you be so concerned about moving these books over? That seems like child's play. I would think that lying to your shareholders, lying to your employees would be more repulsive."

Delainey: "We did both." He added that he and others at Enron lied to shareholders, employees, Wall Street, the FBI and even their own families.

Later, Delainey said he was angry with Skilling for not telling him about the problems at EES before he took over.

"I guess it's sort of like there's no honor among thieves," Petrocelli shot back.

What a great line. I wish I'd thought of that one.

March 01, 2006

*The plea deal, line by line*

Ken Lay's attorney, Mike Ramsey, is going through a rambling cross-examination of former Enron trader Tim Belden. Ramsey is reviewing Belden's plea deal almost line by line, in questioning that is often so confusing even the witness can't understand what he's asking. At one point, Ramsey even invoked game theory.

That's sure to be a hit with the jury. It took about half an hour of questions to establish that Belden had agreed to testify for the prosecution and that he did not agree to talk to the defense.

Even Judge Sim Lake seemed to grow a little impatient with the meandering questions. At one point, when prosecutors objected to a question that they argued Belden had already answered, Lake quipped "I'll let him answer it one more time."

There's 16 former Enron executives who have plea deals and are expected to testify. If Ramsey takes this much time dissecting every one of them, we may still be in court at Halloween after all.

It's shaping up to be a dull day of cross-examination. After the defense is done with Belden, it will move on to David Delainey, the former head of Enron Energy Services, who, like Belden, gave his direct testimony yesterday.

March 01, 2006

*JetBlue blues*

Having stumbled with a $42 million fourth-quarter loss, upstart airline JetBlue now is pining for a fare increase. The $10 hike on one-way tickets would offset rising fuel costs and allow the company continue its aggressive expansion. That program includes the addition of 70 aircraft by the end of next year.

Could this be the first crack in JetBlue's veneer? As I've said before, I remain a JetBlue skeptic. The company has a wonderful product, and I'd love to see them succeed. They've obviously developed a loyal customer base, but their network remains small. As the fourth quarter reminds us, it's unclear if the carrier can sustain its success as it grows.

Most of the new jets it's adding are smaller planes, designed to tap mid-size markets. It may be an effective strategy, but the fact that JetBlue is using the expansion to help justify the fare increase leads me to believe my earlier concerns are coming true. It appears the addition of a second aircraft type will cause their costs to escalate.

# APPENDIX BU

THE HOUSTON CHRONICLE
A Business Web Log
by Loren Steffy
April 2006

April 28, 2006

*A disembodied voice*

I'm scheduled to make another appearance on Court TV's Catherine Crier Live this afternoon at about 4:40 p.m. Obviously recognizing that I have a face that's well-suited for print, they've asked that I do this one by phone. Afterwards I'll host another live chat session at the Court TV web site. Click on, link up, weigh in.

April 28, 2006

*Weekend reading assignment: Is Ken Lay destitute?*

In his testimony earlier in the week, Ken Lay claimed that his net worth is a negative $250,000. As I've pointed out, this seems ridiculous, although he apparently convinced the New York Times. Even the Times story, though, puts his net worth at $650,000. That's a far cry from the $400 million Lay once was worth, but still not exactly broke.

Lay still has his $4 million River Oaks condo. He paid off the mortgage as Enron was failing. The feds have frozen it -- meaning he can't sell it -- but under Texas law, they can't seize it because it's his homestead.

In a comment to an earlier post, John Beasley raised the issue of the annuities that Lay has, and Brian posted this link to the 2002 Mother Jones story that discussed them. Basically, beginning next year, the annuities will pay Lay and his wife about $900,000 a year. For a guy who once borrowed $100 million to fund his lifestyle, that may be a little sparse, but it ought to keep food on the table.

It's an interesting read, but I'm not sure if the Lays still have those annuities. As this story points out, Enron's creditors sued Lay in 2003 over his company credit line and several annuities he apparently sold back to Enron. It's unclear if these are the same.

(This post has more on Lay's finances, as they were discussed in court.)

In the end, though, it may not matter. Any discretionary income that Lay has will probably be going to pay lawyers and legal settlements from civil litigation for the rest of his life.

Please discuss.

April 27, 2006

*Drained by water*

After a two-hour discussion of Enron's water assets, good will impairment and whether Enron was planning a growth strategy for its water business, court adjourned early today. Judge Sim Lake said he'd found the longer day a little, well, draining.

In discussing the schedule for next week, prosecutor John Hueston said he expects to finish up cross examination of Ken Lay on Monday. Lake joked that redirect should be short because Lay was already doing a lot of it from the stand.

Defense attorneys then discussed how many expert witnesses they would call. Jeff Skilling's attorney, Dan Petrocelli, said he senses the "jury is anxious to get this case."

April 27, 2006

*Telling them to buy while he sold*

After returning from lunch, prosecutor John Hueston has been running through Ken Lay's sales of Enron stock, which weren't disclosed to the public. Lay didn't have to reveal the sales to investors because he sold the stock back to the company to repay a credit line.

Lay contends he was selling the stock to meet margin calls on about $100 million worth of other loans backed by his Enron stock. Those loans he used primarily to buy other investments.

Lay, however, continued to make monthly filings that showed when he bought Enron stock. As a result, investors were led to believe that Lay was buying stock, when in fact he had sold more stock in 2001 than he bought.

In September 2001, Lay told employees in an online forum that he thought Enron's stock was an incredible bargain and that he had been a net buyer of the stock. That statement was true, Lay argued, because he distinguished between sales he chose to make and sales he was forced to make to meet margin calls on the $100 million loans.

"I was a net buyer on a discretionary basis," Lay said. "The forced sales did exceed the discretionary purchases."

Lay said because he believed Enron was a good value, he worked to pay down the loans by selling as little Enron stock as possible. He noted that when he received a $10 million cash bonus that year, he used the money to repay some of the loans.

Lay contends he complied with all the appropriate disclosure requirements on the stock sales and purchases.

The problem, though, isn't the disclosure. It's what Lay told employees. He led them -- and for that matter investors -- to believe he was buying stock. That, combined with a carefully constructed process to mask his stock sales, created a false impression in the market.

Lay said investors would have understood if they knew he was forced to sell stock to meet margin calls. Hueston noted he never gave them that option because he never provided them with the information.

"I never felt a need to," Lay said.

April 27, 2006

*A convenient omission*

Prosecutor John Hueston ran through Ken Lay's sales of Enron stock in 1999 through 2001. Lay sold the stock back to the company, which meant he didn't have to report the sales to the public.

However, investors couldn't know that Lay was selling stock to the company to repay a revolving credit line because it was never disclosed. Hueston pointed out that the amendment to Lay's employee contract that allowed for the stock sales was never filed with Enron's annual financial statements.

Lay said he didn't know that. "Those were decisions, again, that were made by our internal SEC lawyers," he said.

Hueston noted that Lay filed Form 4s with the SEC when he bought stock, but made no filings when he sold. As a result, his total holdings shown on SEC filings was distorted, Hueston contended.

By the way, Lay's son Mark, a former Enron employee who was shorting Enron stock in 2001, urged Enron's PR guy, Mark Palmer, for more disclosure of insider transactions. His son wrote that in an e-mail on the last day Ken Lay sold stock in 2001, capping $77 million for the year.

Lay said his son never told him about that.

Hueston said two directors questioned Lay selling so much stock as the share price was falling. One suggested Lay come and explain that to the board and that other directors were concerned, too.

Lay said he didn't recall any such conversations.

April 27, 2006

### *Crowd building for Lay cross*

The media overflow room is filling up. After a sparse crowd most of the week, public interest seems to be rising now that Lay is fielding questions from prosecutors. By my count, about 30 spectators are in here now, in addition to the usual band of reporters and paralegals. The press corps has bolstered its ranks some, too.

Unfortuantely for court-watchers, Lay's cross-examination has lost some of its is earlier pizazz (see posts here and here). Prosecutor John Hueston is now talking about Enron's credit rating. He's trying to show that stories in the Wall Street Journal did not "twist" the truth about Enron's financial condition, as Lay contends.

April 27, 2006

### *A vulture in the family*

In questioning Ken Lay about his belief that a conspiracy of short sellers drove Enron into bankruptcy, prosecutor John Hueston said that Lay's own son, Mark, sold Enron's stock short in 2001. In other words, as Lay was touting the company's prospects to investors, his son was in the market betting against it.

Hueston produced broker statements that showed four separate short sales by Mark Lay that year. Ken Lay said he wasn't aware of the sales.

"He wasn't a vulture was he?" Hueston asked Lay of his son, making a reference to the opening argument by Lay's attorney, Mike Ramsey. "He wasn't trying to kill Enron in 2001? Sir, the fact is that short sellers were asking you questions you just didn't want to answer."

Hueston noted that in an employee meeting in October 2001, Lay likened short sellers to the terrorists who had attacked America a month earlier. Lay explained that by that time, he believed Enron was "under siege."

Lay and his co-defendant Jeff Skilling have both claimed that short sellers conspired at a meeting in Florida in early 2001 and targeted Enron as the stock they planned to attack.

"Do you have knowledge of any other top 10 American company taken down by unfounded rumors from a secret meeting in Florida?" Hueston asked.

Lay has said he believes stories in the Wall Street Journal in the fall of 2001 were planted by short sellers. Those stories focused on the LJM partnerships and how much money Andy Fastow made from running them on the side.

Lay has testified he didn't know how much Fastow was making. Hueston said Lay never bothered to find out, even after the Journal raised the prospect that Fastow made millions more than Lay said Enron's board believed he was. Pressing his point, Hueston noted that Lay, could have chosen to find out the answer and provide it to the Journal. Lay has testified he wanted to talk to the paper but his public relations people didn't want him to.

Instead, Lay chose to berate the people who were asking the questions. As CEO, he chose to liken them to terrorists rather than find out what had happened at his own company, Hueston said.

Lay said Enron believed there was a "Chinese wall" between Enron and LJM and it wouldn't have been proper.

April 27, 2006

*Words versus deeds*

Prosecutor John Hueston is addressing Ken Lay's statement that he accepts responsibility for Enron's demise. Hueston said Lay has not paid anything to Enron investors and employees who lost money in the company's collapse.

Hueston noted that the government witnesses whose credibility Lay has questioned because of plea deals -- Paula Rieker, Ben Glisan, Mark Koenig, Ken Rice and others -- have paid millions in restitution to Enron's victims.

"Sir, you've paid nothing to the victims of Enron's collapse," Hueston said.

"That is not true," Lay responded.

Lay said he had made some private contributions to a fund for Enron's former employees and had helped some individuals. Hueston pressed the point that Lay has made no attempts to settle the civil suits brought against him by Enron investors and employees.

"Other than using the words 'taking responsibility' you haven't provided any details of anything you've done to take that responsibility, " Hueston said.

"I certainly would have preferred to put some of the money I've spent on lawyers toward helping other people," Lay said. But, as he noted yesterday, he has "nothing left," he said.

April 26, 2006

*Jury agrees to extend trial days*

Jurors said they had reached what they called a "unanimous bear hug" on Judge Sim Lake's efforts to speed up the trial schedule: court will begin tomorrow at 8 a.m. and the lunch hour will be cut to one hour. There will still be no court on Friday.

Lawyers for both sides expect to wrap up Lay's testimony by Monday.

The bear hug comment, by the way, a reference to the lexicon of this trial, drew widespread laughter in the courtroom, and applause from Lay on the witness stand.

April 26, 2006

*More exposure of Photofete*

Prosecutor John Hueston returned to Photofete, the company started by Jeff Skilling's girlfriend that had a $450,000 contract with Enron. Lay committed about $120,000 to Photofete.

Hueston noted that like Skilling, Lay never disclosed his investment to Enron's board, a clear violation of the company's ethics policy. After much wrangling, Lay acknowledged that he probably had, but said he really didn't recall. In fact, he didn't even remember the investment until it came up in the government's cross-examination of Skilling.

The now-defunct Photofete has become a surprising weapon that the prosecution has used in an attempt to undermine the credibility of both defendants in this case.

Lay, by the way, continues to be a belligerent witness. At one point, when Hueston asked if he'd notified the board, Lay said he didn't recall, but said he assumed Hueston had already checked.

"One thing you guys are is thorough," he said.

After getting Lay to acknowledge the ethics violation, Hueston said, "Let's go on to a different topic."

"Good," Lay said.

April 26, 2006

*The 'monkey' man and other claims of witness tampering*

Prosecutor John Hueston accused Ken Lay of trying to influence the testimony of risk manger Vince Kaminski, saying Lay attempted to contact Kaminski nine days before Kaminski testified for the government in this case.

Lay: "I did not know he was going to testify."

Hueston: "He was listed on the government witness list."

Lay said he didn't know that, and that he wanted to get Kaminski's expertise on risk management issues.

"I was more interested in talking with Vince Kaminski about risk management issues that might come on our side," he said. "I didn't understand he was going to testify in this trial."

Hueston then asked Lay if he had made derogatory comments about government witnesses.

"Are you considering yourself in that?" Lay shot back.

"Mr. Lay, I'm an assistant United States attorney," Hueston replied. "This is my job. You can call me anything you want."

Hueston then said he was referring to Ben Glisan, specifically to comments Lay's attorney Mike Ramsey made outside the courthouse in which he called Glisan a monkey and said he "contradicted the whole theory of intelligent design." (Ramsey also called Glisan a "puppet" and likened his testimony to a "scripted ventriloquism show.")

Lay said he didn't remember the comments. Hueston pointed out that he was standing next to Ramsey at the time. Lay said he believed that "there were lies" in Glisan's testimony.

Hueston then said that Lay approached Glisan in the bathroom area near the court during a break in his testimony and expressed kind feelings for the former Enron treasuer and his family. Lay said he'd probably said something like that. He said he felt sympathy for Glisan because of the pressure the government had put on him.

"So one message for the outside world, one message while Mr. Glisan is testifying on the inside?" Hueston said.

"I can't take full responsibility for what my lawyers say or do," Lay replied.

April 26, 2006

*A cross beginning*

Prosecutor John Hueston picked up his cross-examination of Ken Lay where Lay's direct testimony left off, with Lay's outstanding $7 million loan to Enron.

"Just to make it clear, you have not repaid one dollar of that $7 million," Hueston said.

"We tried to and you blocked it," Lay replied.

Hueston asked the question again. Lay's response was the same.

Hueston asked if the Enron Task Force attempted to block the repayment when the agreement was first reached in 2003.

"Mr. Hueston, you know you blocked it," Lay replied.

"Zero is the right response, correct?" Hueston said.

"Zero is not the right answer, but you can write it down," Lay said.

Hueston reminded Lay he was under oath. Lay said pointed out he was sworn to "tell the whole truth."

And with that, we're off to the races. Hueston is now attempting to show that Lay contacted potential witnesses in the case -- including employees of Goldman Sachs -- to try to get them to back up his version of events.

Lay, of course, is denying that. At one point, Hueston referred to Lay's "story."

"I don't have a story, Mr. Hueston," Lay said, adding that he simply has his recollection of the facts.

April 26, 2006

*Mr. Houston vs. Mr. Hueston*

Ken Lay said he feared he would face personal bankruptcy at about the same time that Enron was filing for bankruptcy in December 2001. Because much of his net worth was tied up in Enron's stock, Lay, who was once worth some $400 million, saw much of his wealth evaporate. Lay says he's now worth a negative $250,000. (That's hard to believe, seeing as how he paid off his mortgage on his River Oaks condo, which he himself said was worth about $4 million. Since he owns it outright, the government can't seize it, even though it's currently frozen and he can't sell it.)

As for Lay's outstanding loan from Enron -- he borrowed $77 million in 2001 and repaid $70 million with his Enron stock -- Lay said there were some discussions with Enron's creditors about paying the money back in 2003. By early 2004, there was an agreement to settle the issue.

"The creditors committee and we went through a various serious effort on that," Lay said. Lay's attorney, Mac Secrest, then asked if that settlement was ever paid, and Lay used the opportunity to lash out at prosecutor John Hueston, who will be cross-examining Lay perhaps as soon as this afternoon.

"It was not finalized," Lay said. "and it was not finalized because John Hueston blocked that deal."

A little background: Enron's creditors committee wanted the Justice Department to sign off on the agreement, and the DOJ refused.

April 26, 2006

*A real run on the bank*

Ken Lay said his drawdowns on the Enron line of credit were used to meet margin calls on his other bank debt. That debt was backed by Enron stock, which was falling in value.

He offers this excuse as if it somehow makes what he did OK. The bottom line is that Lay was monetizing his Enron stock unbeknownst to the market. He was cashing out while telling the rest everyone else they should be buying.

And why was he cashing out? Because Enron's stock was dropping like a rock and the banks no longer considered it adequate collateral.

Lay, by the way, said he didn't recall the interest rate on his credit line from Enron. I'm sure prosecutors will find out.

April 26, 2006

*Lay's pay on display*

Ken Lay is running through the details of his personal finances, starting with the disclosure that he made a total of $220 million during his final three years at Enron. Of that, about $36 million was in cash. The rest was in the form of 187 million Enron stock options.

Lay noted that his living expenses for him and his family during that time was about $22 million, or, as he pointed out, about 10 percent of his total income. Lay also noted that the value of his Enron stock was declining in 2001, and pointed out that the stock he was using to repay his Enron credit line was falling in value, too.

That, of course, isn't the point. By returning the stock to Enron, Lay was locking in the value of the shares, shielding himself from further losses and turning Enron into his personal ATM.

Lay said as much as 90 percent of his net worth was tied up in Enron stock by late 2000. He used that stock as collateral on loans and by 2001, he was about $100 million in debt, almost all of it backed by his Enron shares. When Enron shares began to fall, the banks demanded more collateral or the repayment of some of the principal.

"It's all gone," Lay said of his wealth. He sold $20 million worth of real estate, including three homes in Galveston and three in Aspen. Much of the money went to pay legal expenses.

Lay says he drives a 1993 Mercedes and his wife drives a 1999 one. He also owns a Jeep Cherokee in Aspen. (So, he sold his houses but he still keeps a car there?)

And yes, we're hearing about the ball park -- Astros owner Drayton McLane will testify as a Lay character witness, probably next week -- and all Lay's charity work.

During those last three years, he gave about $25 million to charity. Lay said he usually gave in stock rather than cash, because of the tax benefits. In fact, most organizations prefer that.

"When you give stock, the organization is getting the full benefit of that stock," Lay said. Of course, this was Enron stock, so they also got the full whammy.

April 26, 2006

*The jury's first deliberation*

Judge Sim Lake, known for his hard-line trial management, has given the jury a decision. As he noted yesterday, the case is falling behind Lake's plan.

"I'm chagrined that we're running behind the schedule that I gave you a month or so ago," Lake told jurors just before lunch. "I'm thinking about methods of accelerating our schedule."

Lake then gave jurors several options. He said he will shorten the hour-and-a-half lunch break by 15 minutes, but would consider cutting it to one hour. Other options include starting at 8 a.m. or 8:15 instead of the current 8:30 and having court on all or part of Fridays.

"This is not a ruling. I want you to discuss it," Lake said. As for Fridays, "I don't like that option because I use it for other things and the lawyers use it for other things." Many jurors, he noted, use Fridays to keep their jobs going.

"I'm not trying to burden you," Lake told the jurors. "I realize from my own experience you can only concentrate so many hours a day."

Lake wants to conclude the presentation of evidence by May 11 and have closing arguments the following Monday. "That goal cannot be achieved consistent with our current working schedule," Lake said.

Meanwhile, contributing to the problem is defense attorney Mac Secrest's continuing slog through direct questioning of Ken Lay. Secrest told Lake he expects to conclude today, but not before about 3 p.m.

April 26, 2006

### *Ken Lay, talking head*

The doofus defense is now in full swing. Ken Lay argues that he didn't intentionally mislead investors when he told them in October 2001 that Enron's liquidity was fine. He really believed that it was.

If it wasn't, well, then he was misled by Ben Glisan, the former treasurer, or Andy Fastow, the former chief financial officer. He merely repeated to investors what Glisan and Fastow told him, Lay said. Both Glisan and Fastow testified that Lay knew his statements weren't true when he made them on a conference call with analysts.

Now, I understand that a chief executive might not know all the intricate financial details of his company, but liquidity is a fundamental measure of financial health for a company like Enron. It seems the sort of thing Lay would have known. Of course, the doofus defense requires him to disavow any knowledge of his company's operations. He just read the script and smiled for the camera.

April 26, 2006

*No break for Big Mac*

Judge Sim Lake is serious about getting the Enron trial back on schedule. Defense attorney Mac Secrest, continuing his direct questioning of Ken Lay, came to a stopping point after asking Lay some questions about Enron's retail electricity business. Normally, the judge calls for a mid-morning break between 10 a.m. and 10:30 a.m.

At 9:52, Secrest asked Lake if it would be a good time to take a break.

"No," Lake responded. Secrest carried on. Five minutes later, Lake called for a break. Secrest, who's already being badgered by his own client, can't seem to catch a break from the judge either.

Oh, and the testimony? Dull as ever. One reporter here in the overflow room likened it to watching concrete harden.

April 25, 2006

*Ooh noo! Not two more weeks!*

After testimony concluded for the day, Judge Sim Lake asked for an update on the schedule for the remainder of the trial. Defense attorneys said even if

Ken Lay finishes testifying this week, they have as much as two more weeks of defense testimony. Then, the government has its rebuttal, which prosecutors said would be "less than a week."

Lake, who's been keeping the case moving a fast clip, expressed displeasure that the case was dragging out.

"We're getting a bit behind schedule, so I'm going to start looking at extending our days or shortening our lunch breaks," Lake said. That prompted a groan from reporters here in the overflow room. Currently, court convenes at 8:30 a.m. and breaks at about 4:30 p.m., with an hour and a half for lunch and three 15-minute breaks.

Lake originally had wanted the defense to finish its case by the end of April.

April 25, 2006

*Has Enron fatigue trumped the Lay mystique?*

Ken Lay hasn't drawn the spectators into the overflow room the way Jeff Skilling and Andy Fastow did. Aside from the usual press contingent, there's been perhaps a dozen or so others watching the trial here on closed-circuit television. Skilling drew so many people that court officers had to close the room to newcomers. Fastow, too, packed them in.

But Lay, who gets top billing as a defendant, doesn't seem to hold much public interest. Maybe it's because he's been fairly public in stating his case in recent months, so everyone feels they've heard his story. Maybe it's that Enron fatigue is setting in. Or it may be that Lay's testimony has been so disjointed and confusing that no one can follow it. Even Lay himself, at times, has been confused by the questions posed by his attorney, Mac Secrest.

The scene, by the way, is quite different outside the courthouse, where the throng of TV cameramen has been growing, following Lay and his wife, Linda, across the street as the walk to lunch or leave for the day.

April 25, 2006

*No kimono -- open or closed*

Ken Lay has revived one of the more disturbing phrases that's come up in this trial, in talking about a meeting in which Enron officials met with Goldman Sachs in the fall of 2001. Earlier, Andrew Fastow said the meeting was a desperate move to recapitalize Enron. Ken Lay says it was to develop an anti-takeover defense because Enron's shares had declined so dramatically.

Fastow said the meeting required Enron to "open the kimono" and show the full scale of its financial problems. Fastow clearly liked the term, and even Jeff Skilling used it.

Lay said Fastow mischaracterized both the purpose and the content of the meeting. "I don't think I saw any kimonos open or closed at that meeting" he said.

Let's hope so. And let's hope we're done with this term.

April 25, 2006

*Not the hole story*

Ken Lay has this habit of leaving out seemingly key details from his testimony. For example, in talking about Enron's slide into bankruptcy in November 2001, he noted that Enron faced two choices: a recapitalization by its bank syndicate or a merger with Dynegy.

As we know, Enron opted for the merger, which came close to happening. Lay talked about how the deal was done in New York, about how he had signed the papers and was preparing to fly back to Houston. Dynegy chairman Chuck Watson was scheduled to go on CNBC's Squawk Box the next morning to talk up deal. Then, Lay said, he got a call from Watson, who said his board was having problems with the deal.

OK, so we got all that detail, right? Getting on the plane, the planned TV spots, the signing of the papers. What happened?

"Finally, it got cancelled and Enron got downgraded," Lay said matter-of-factly. And then we're on to another topic. Attorney Mac Secrest didn't bother to ask what happened.

Of course, part of the reason for that could be that Watson was furious that Enron had tried to dupe Dynegy into the merger the same way it duped investors -- by hiding its financial problems. So maybe Lay doesn't want to go there, but it seems an obvious hole in his story.

Lay did the same thing yesterday in discussing why executive Greg Whalley didn't attend an investor meeting in Boston.

Again, you can bet prosecutors are noticing these holes in the testimony and will come back to them on cross examination.

April 25, 2006

*Digesting Chewco*

Resuming his plodding testimony after lunch, Lay argued that Enron was brought down, in part, by reporting in the Wall Street Journal. He made that claim yesterday, too. One of the things the Journal reported was the details of the Chewco partnership, set up in the late1990s by Andrew Fastow and his subordinate, Michael Kopper.

Chewco held what had been Calpers interest in the JEDI partnership. It kept about $700 million worth of debt off Enron's books and netted some $1.5 million in management fees for Fastow and Kopper on the side.

Here's more background on the Chewco deal:

For Chewco and its holdings in Jedi to stay off Enron's books, Enron needed a partner to contribute at least 3 percent outside equity, but prosecutors say investors failed to come through and Enron manufactured an "outside investor" known as Big

River. In reality, the money for Big River's investment came from a thinly disguised loan from Barclays Bank, which demanded that Enron put up $6.6 million in cash collateral and guarantee repayment. Such an arrangement, prosecutors say, flunked the 3 percent test.

Meanwhile, prosecutors say, Kopper collected huge management fees related to Chewco and passed on a chunk of these "kickbacks" to Fastow, sometimes writing checks to Fastow's wife and children. Kopper also turned over an ownership stake to a man investigators identified as Kopper's domestic partner, William Dodson.

"They set it up this way so that they could control it and profit from it," Lay said.

According to Lay, after the Journal wrote about Chewco, Lay and the board decided to figure out what it was. They then asked Arthur Andersen to review the accounting. Andersen decided the partnership wasn't capitalized properly, and therefore Enron had to restate earnings back to 1997, to the tune of $400 million, Lay said.

That restatement was "further driving the nail in the coffin of Enron's demise," he said.

So by Lay's own account, the Journal's reporting alerted Enron's board to a major theft by a senior executive going on under the board's nose. How does that make the paper the bogeyman? Lay never argued the Journal's account was inaccurate. Apparently, it was just inconvenient.

April 25, 2006

*Maybe it was a rounding error*

Ken Lay is recounting his discovery that Andrew Fastow was "raking off" big profits from the side partnership deals Fastow had set up with the board's approval. That discovery came after investment banks refused to loan Enron money as long as Fastow remained chief financial officer, Lay said.

Lay had expressed confidence in Fastow at an employee meeting just days earlier. "I had told Andy on other occasions that if he lost the confidence of the financial community, we'd have to reconsider" that support, Lay said.

Lay said the board then discovered that Fastow had made $45 million from the LJM partnerships deals, buying troubled assets from Enron. "I was shocked by the $45 million, and all the board was too," Lay said. "Our expectation about his compensation was that it would amply, maybe even generously, reward him for making some investments" in the assets. Lay said the he and the board were led by Fastow to believe that his profit would be about $1 million, far less than his Enron pay, Lay said.

But at Enron, wasn't a difference of $44 million just a "rounding error"?

"It's grossly more than any of us, including me, expected," Lay said. "It begins to appear that our trust in him has been unfounded. All the directors felt their trust had been violated."

When the board decided to fire Fastow, Lay said he walked down the hall to give his soon-to-be former CFO the news. Fastow immediately tried to negotiate a severance package of about $5 million, Lay said. "At that time, I said 'hell no, Andy, pack up your stuff and leave the building.'"

And thus did Ken Lay put an end to his two biggest mistakes.

April 24, 2006

*Origins of a whitewash*

Ken Lay told jurors that when he met with Sherron Watkins after he received her now-famous memo, he "found her a very serious minded individual. Very credible." Lay said he took Watkins' concerns seriously.

"I asked her whether she believed the accounting did not comply with generally accepted accounting principles. In each case, she would say 'no, I don't know that they don't comply with the accounting standards or principles.'" Lay then asked her if she thought Enron was doing anything wrong or illegal.

"She said no," Lay testified. "She just thought that [the Raptor transactions] were inappropriate and there might be an appearance problem, a PR problem, if they were disclosed."

Lay said he assured Watkins he would not let Andy Fastow retaliate against her for raising the concerns, and after Watkins left, he walked down to the office of Jim Derrick, Enron's general counsel, and told him to look into the matter.

Thus began the now well-known whitewash by Vinson & Elkins in investigating Watkins' concerns. Lay said he left the details of the so-called investigation to Derrick. The problem, though, was that Lay knew V&E had done the legal work on the Raptors, yet Derrick used V&E to investigate her claims anyway.

April 25, 2006

*Where's Whalley?*

Ken Lay said that, at a meeting with analysts in New York in August 2001, Greg Whalley, who ran Enron's wholsesale group, was very engaged in presenting Enron's story to analysts. Part of that story was that everything was fine at Enron despite Jeff Skilling's abrupt resignation. This is the same meeting that Andrew Fastow testified about in early March, recounting what Whalley told him at the meeting:

When the group was about to head to Boston to visit more analysts, Whalley, considered a maverick even by Enron's standards, decided to drop out and return to Houston.

Fastow said he was concerned and asked Whalley, who later became president of the company, why he was leaving at such a crucial time.

"He said 'If I went to Boston, I'd have to lie too much,'" Fastow told jurors.

Lay said he didn't notice anything at the New York meeting that indicated Whalley was uncomfortable with what he was telling analysts about Enron.

"He was one of the more active participants in the discussion," Lay said. "The analysts liked Greg's candor... Greg was going back to Houston for other reasons."

Lay, though, didn't say what those reasons were, and his attorney didn't ask. You can bet prosecutors will when we get to cross-examination.

April 25, 2006

### *Me and MSNBC*

I'm scheduled to appear on Dan Abrams' show on MSNBC at about 3:40 p.m. Houston time today. I'll be talking about the first day of Ken Lay's testimony, of course.

April 25, 2006

*Lawyers as lackeys*

Ken Lay clearly seems to miss being top dog. In listening to the way he talks to his attorney, Mac Secrest, it's clear that Lay believes attorneys are his subordinates, not professionals hired to represent him. I mentioned in this earlier post how Lay has cut Secrest off when he wasn't ready to stop talking. It seems a little strange given the softball nature of the direct testimony.

Yet this peculiar habit has continued after lunch. At one point, discussing a conference Lay spoke at in Europe, he asked, "Where are you going with this Mr. Secrest?" Oddly, Secrest didn't seem to know, and moved on to another topic.

In discussing the meetings in which Jeff Skilling resigned as chief executive in August 2001, Lay said Skilling first told him he was quitting on a Friday. Lay said he basically tabled the matter over the weekend, and met with Skilling again on Monday. Secrest then asked about a board meeting that happened later in the week. Lay, though, clearly thought Secrest had missed something.

"Maybe we should talk about our Monday meeting," Lay said.

Now, Secrest is pinch hitting on the direct questioning, of course, because of lead attorney Mike Ramsey's health problems. Even so, Lay seems a tad irritated with his own attorney.

On the one hand, that's understandable if he thinks the questioning isn't being handled properly. He is, after all, paying handsomely for his legal team to get him acquitted. But if Lay were concerned that his defense was damaged by Ramsey's absence, he could have asked for a continuance. Lay has said all along he wasn't worried about Secrest questioning him.

So it would seem the edge in Lay's tone represents an underlying attitude. There's no way to tell, of course, if the jury is noticing these little asides. Still, it's not a stretch to figure that if Lay treats the lawyers he's paying millions to defend him like lackeys, he probably didn't treat Enron's lawyers - or for that matter its accountants - much better. So what are the chances those lawyers or accountants stood up to him if they questioned anything Enron was doing?

April 25, 2006

### *Failed management 101*

Defense attorney Mac Secrest asked Ken Lay to explain his management philosophy, and Lay eagerly jumped to the task. Having given the jury a lengthy recounting of the formation of Enron, a fond recollection of his childhood and early years in business, and an aw-shucks discussion of his family, he is now talking about how he likes to run companies.

It's another one of those surreal discussions in which the context of Enron's utter failure seems to be forgotten.

"I'm very much of a decentralization person," Lay said. "I've always tried to develop the organization around the talent of the individuals. Let them spread their wings and see what they can do. I'm more of a delegator."

Yeah, good answer when you're facing six charges of conspiracy and wire and securities fraud.

Lay said he likes to hire executives with complementary talents. For example, while he was a delegator, his co-defendant Jeff Skilling was much more hands-on. Lay also noted that Skilling "really gets into the details and the guts of how things work." I'm sure Skilling appreciates that little plug.

Lay then went on to tell the jury how companies should be run, which is rather amusing given that he didn't run his very well. It's management expertise from the guy who oversaw one of the biggest business failures in history.

"I've always begun with the basic premise that you need to go after the very best talent," Lay noted. Even if that talent later winds up testifying against you.

By the way, Lay noted earlier that he didn't follow his own management philosophy. He told jurors that he believed when a chief executive steps down, he should completely leave the company to make way for new leadership. He said when he stepped down as CEO of Enron in early 2001, Enron's board and Skilling convinced him to stay on as chairman.

"I suspect that if I had done that, Mr. Secrest, I wouldn't be sitting here today," Lay said.

April 25, 2006

*Was that the sound of a door opening?*

During his testimony over the next few days, Ken Lay must choose his words carefully, as John Roper explains in this story from today's Chronicle.

The government's indictment focuses only on his time at Enron after he returned as chief executive officer in August 2001. However, Enron's earlier sins aren't included in the scope of this case unless Lay "opens the door" with broad statements and Judge Sim Lake allows the prosecution to delve into past trading transgressions at Enron.

That door may have already opened. In talking about the charges against him, Lay scoffed at the notion that he engaged in a conspiracy at Enron.

"It is absolutely ludicrous that I would step back into a company and pick up the mantle of a conspiracy," Lay said. Then he added this statement: "I don't think there was ever a conspiracy of any kind."

"Ever a conspiracy?" "Ever" is exactly one of those words that Lay has be careful about using. We'll have to wait until cross examination to see if prosecutors think this opened the door.

April 25, 2006

*Blame it on Andy*

Ken Lay said that in all his years running Enron, he never encountered problems of the magnitude he saw battering Enron when he resumed the chief executive job in the fall of 2001.

"This came on so fast and so dramatic and just so destructive. There was an incredible amount of pain," Lay said. "He referred to the collapse as "a firestorm we just couldn't stop."

Lay then trotted out the increasingly tired "run on the bank" excuse for Enron's failure. That run on the bank, though was sparked by three things, as Lay sees it.

"It all begins with the deceit of Andy Fastow and probably no more than one or two other people," he said.

Secondly, those evil short sellers. "In this case, there were short sellers who were working together and conspiring together, a real conspiracy," Lay said.

At that point, Lay's attorney, Mac Secrest, must have missed his cue, because Lay had to cut him off. "And finally - I'm not done yet Mr. Secrest, this is not simple - finally the cooperation of the most powerful financial newspaper in this country, the Wall Street Journal." The Journal, Lay contends, engaged in a "campaign" against Enron beginning in

October 2001, writing articles "day after day after day" with information fed from short sellers. "They had information that even we didn't have," Lay said.

This, of course, is what newspapers do -- write articles day after day and tell people things they didn't know. Let's not forget the Journal's articles about Fastow's side partnerships were true. So Lay's argument is basically that Enron couldn't endure the truth.

Why? Well that's because of the "tinder box" that was the economy in late 2001.

Fastow's thieving, you see, eroded confidence in a fragile market. "It was just an environment in which what Andy did and hid, and what the Wall Street Journal did with the help of short sellers....led to run on the bank that we just couldn't stop."

Whose fault was that? Well, Lay offers this little chestnut, which he's used before on speeches: "I take full responsibility for what happened at Enron. I can't take full responsibility for the individual conduct of all 30,000 employees at Enron, particular those that engaged in criminal activity. "

Secrest then asked Lay what was the biggest mistake he'd ever made in his business career.

"Hiring Andy Fastow," Lay said. And what was the second-biggest mistake?

"Promoting him to chief financial officer," Lay said. "That put him in a position of power, authority, influence where he could do the damage that he ended up doing."

April 25, 2006

*Lay: 'We worked hard for what we had'*

Ken Lay took the stand and immediately declared his innocence of the charges against him and denounced the government's of the case against him.

"I would never have thought ever that I would be in federal court charged with criminal charge," Lay said. Asked if he engaged in a conspiracy at Enron, Lay responded "I did not." Asked if he committed wire fraud, Lay again said "I did not."

The first few minutes of Lay's testimony focused on the success he enjoyed and the wealth he had before Enron collapsed. This is a key part of the defense. Given some comments prosecutor John Hueston made in his opening arguments, it's a safe bet the government will make Lay's wealth part of its case.

"By most standards I've been successful, way beyond my wildest hopes and dreams," Lay said. "I've not only pursued the American dream, I've achieved it. I suppose you could also say in the last few years I've also achieved the American nightmare."

Lay's testimony, though, doesn't appear as polished as Jeff Skilling's. Several times he has asked his attorney, Mac Secrest, to repeat questions. For example, Secrest asked if Lay thinks that financial success translates into financial reward.

"Financial success translates into financial reward? Maybe you ought to repeat that Mr.

Secrest," Lay said. Lay went on to explain that many people such as teachers and ministers achieve success and do good things but don't reap large financial rewards.

His testimony has been more relaxed that Skilling's was early on. Skilling came out of the gate making rapid-fire statements, points that he wanted to drive home to the jury. Lay certainly has points he wants to make, too, but he's taking a more conversational tone on the stand.

Lay said he wasn't ashamed of his lifestyle before Enron's failure, then took a shot at prosecutors.

"I suspect there's some people at that table in the middle there that would try to make it look that way, but we worked very hard for what we had," he said.

And yes, Lay touched on his donations to charity and his belief that companies should give back to their communities. "We have tried to give generously," he said. "Throughout my business career I've always felt very strongly that businesses should give back to their communities."

That's important, but so is solvency. I'm reminded of something Jack Welch said when I interviewed him last year: the best way to give back to the community is to build a strong viable company. That has to come before charity, Welch argued, because strong companies create jobs and empower employees to give back as well.

But I digress. Secrest asked Lay if he was anxious to set the record straight on Enron.

"I am very anxious and trying to do what I can to get the truth out about Enron," Lay said.

"Mr. Lay, that day has arrived. Let's get started," Secrest replied.

April 21, 2006

*Mathis wins again*

Harold Mathis is at it again. I first wrote about Mathis almost two years ago, when he led a successful shareholder campaign to urge Baker Hughes to elect all its directors annually.

Last year, Mathis turned his attention to Reliant, calling for an end to the staggered board elections there as well. Reliant moved the meeting to Pittsburgh and didn't issue a press release announcing the results from his proposal, which passed with 65 percent of the vote. The resolution was nonbinding. So, of course, Mathis filed the same proposal again this year.

This time, though, Reliant, which had opposed the measure in the past, offered no opposition in its proxy statement, adding:

> ...the Board has determined that it wants to use this proposal as an opportunity for stockholders to express their views on this subject without being influenced by any recommendation the Board might make.

Supporters of classified boards often contend, among other things, that a classified board can promote stability and continuity of leadership and enhance a board's ability to respond to certain types of takeover bids by making it more difficult for an unsolicited bidder to gain control of a company. Opponents of classified boards often advance arguments such as those contained in the stockholder's supporting statement

If shareholders approve the measure, which Mathis believes they will, then next year Reliant's board would submit a proposal to change the company's articles of incorporation. That, too, would have be approved by shareholders for the changes to take effect.

Mathis, it seems, has done it again.

April 20, 2006

*Distilling Skilling*

Several readers have asked for my assessment of Skilling's testimony. I spent a lot of time last night trying to put it all in perspective, and I'll have a more detailed analysis in my column tomorrow. But, for what it's worth, here's how I think it stacks up:

Skilling's direct testimony did everything he wanted to do. He got to tell his version of Enron, relive his glory days and generally try to make the case that Enron was a fine, fine company that lead with distinction.

He held up better than I expected under cross, and the prosecution didn't land as many blows as I thought they would. Talking to reporters at the lunch break, Skilling said he felt he had an opportunity to say what he wanted to say about Enron.

That said, the prosecution was able to do enough damage that Skilling's credibility is in question. Was it enough to make the prosecution's case?

That, of course, is something only the jury can answer. But my call is that while Skilling did well, it wasn't enough to dispel all the testimony against him, especially on the insider trading charges.

We're running through a string of character witnesses this afternoon, so expect only light blogging.

April 20, 2006

*Skilling's done before lunch*

Jeff Skilling wrapped up his testimony just before court broke for lunch. Defense attorney Dan Petrocelli submitted Skilling's tax returns into evidence in an attempt to beat down prosecutors' allegations that Skilling dodged gift taxes on his investment in Photofete.

Petrocelli said Skilling paid $66.2 million in taxes from 1997 to 2004, and noted that despite repeated reviews of his taxes, the Internal Revenue Service has never charged him with tax fraud.

Skilling also agreed that he had shown poor judgement in his handling of the Photofete matter, but argued that he used much better judgment in dealing with Enron's employees and shareholders.

I'm sure all you Enron shareholders and employees out there would agree, no?

April 20, 2006

*Photographs and (forgotten) memories*

On recross, prosecutor Sean Berkowitz has returned to the issue of Photofete, the company run by Jeff Skilling's former girlfriend, Jennifer Binder. Skilling invested in the company beginning in 1998. Or was it 1997? Berkowitz showed two checks in sequence each written to Binder and both deposited in March 1998. Checks on either side were written about the same time. One of the checks to Binder was dated December 1997.

After a lengthy verbal dance, Berkowitz got to the point: "I'm asking you if you backdated a check to avoid paying [gift] taxes."

Skilling said he didn't recall what the checks were for or when he wrote them, but denied he was a tax cheat. "If you believe this is somehow a violation of the tax laws, I'd be happy to sit down with you and talk about it because it's not," he said. "The IRS has looked through my tax returns a total of four or five times in the past three years. I paid the appropriate taxes."

Berkowitz continued to press the Photofete issue, which Skilling acknowledged caught him off guard on Monday. At that time, he said he probably violated Enron's ethics policy. On redirect yesterday, Skilling's attorney tried to portray that violation as minor.

Berkowitz then asked Skilling about when his relationship with Binder ended, and Skilling said they remain friends. Berkowitz wanted to know when the romantic relationship ended.

"What does this have to do with fraud at Enron Corp., just out of curiosity?" Skilling asked, followed by a nervous chuckle.

Berkowitz then produced a copy of Enron's ethics policy for Skilling to look at, which produced this priceless little exchange:

Skilling: "I didn't understand this - what is this again?"

Berkowitz: "This is the code of ethics."

Skilling, upon reviewing the document, acknowledged that he had clearly violated it by not telling Enron's board that he had invested in a company and that he had a relationship with the head of a company that also had a contract with Enron.

"In retrospect, I probably should have been more diligent on this," Skilling said. "I'm sorry. I didn't occur to me."

That, Berkowitz said, is what it had to do with fraud at Enron.

"When we started this testimony, we agreed that most important thing that the jury had to rely on was your word," Berkowitz said.

April 20, 2006

*When you wish upon a VAR....*

It makes no difference what the prices are. That's what Jeff Skilling contends in his redirect testimony this morning. By publishing Enron's value-at-risk numbers, Skilling said the market understood the company's lack of exposure to commodity prices.

"Any analyst" who saw those numbers would understand that, Skilling said, adding "Everybody in the industry understands this and can translate this."

Except, of course, for those analysts at Alliance Capital Management, who were heard in conference call played yesterday questioning Skilling about price exposure, even though they had the VAR numbers in hand. Now, Alliance held some 20 million Enron shares, and eventually bought 13 million more and manages $580 billion worth of investments in thousands of companies.

Skilling explained their confusion yesterday by saying Alliance had "some new guys" on the call who didn't understand Enron's business. But, hey, they had the VAR numbers, so everything should have been clear.

April 19, 2006

*Skilling almost done, Lay on deck*

Testimony has wrapped up for the day. Jeff Skilling's lawyer says he'll have about two hours more of redirect, then of course, there may be some recross. Skilling, though, will probably be done by midday tomorrow. Judge Sim Lake bristled at the two hour prediction, saying Skilling's lawyer, Dan Petrocelli, had promised him two hours total for the redirect. Petrocelli vowed to "sharpen his pencil" tonight and see if he could reduce the time.

After Skilling, the defense plans eight character witnesses, experts and others, including Carol Baxter, the widow of Cliff Baxter, who will testify about Skilling's and Baxter's plans to raise $3 billion to save Enron in late 2001.

Petrocelli said all the witnesses will be "very short." Maybe the judge should bring some extra phone books to stack on the witness stand. (Sorry, folks, it's late in the day.)

Anyway, Petrocelli predicts he'll be able to finish with all the witnesses tomorrow, so co-defendant Ken Lay could take the stand on Monday.

April 19, 2006

*Vetting Photofete*

Under redirect, Jeff Skilling acknowledged that a discussion of his former girlfriend's former company, Photofete, caught him off guard when prosecutors brought it up on Monday. "I had completely forgotten about it before it came up in court," Skilling said.

He also said he didn't have anything to do with Photofete landing a contract with Enron that was worth more than $450,000, even though he originally thought it was worth $3,000.

In fact, Skilling now says he's sure he told co-defendant Ken Lay about his $180,000 investment in the company (even though on Tuesday he didn't remember the amount or whether he'd told Lay). And his attorney, Dan Petrocelli, noted that Enron's ethics policy says the chairman is supposed to be notified in writing of such potential conflicts. So, see, Skilling didn't really violate the policy, because he did tell Lay, just not in writing. And if, after such notification, the board determines there's a conflict, its supposed to let him know. Well guess what? Enron's ever-alert directors -- the same dim bulbs who waived that same ethics policy to allow Andy Fastow to buy assets from the company on the side -- didn't ever say anything about the Photofete deal.

So, Petrocelli argued, Skilling really didn't violate the ethics policy, even though on Tuesday Skilling acknowledged that he did and even apologized to the jury for doing it.

April 19, 2006

*Unclear recollection of Lucent*

Jeff Skilling testified that after he left Enron in August 2001, he was approached by a headhunter who discussed several jobs, including chief executive officer of Lucent Technologies.

As if Lucent didn't have enough problems of its own at that time...

Fortunately for Lucent's already suffering shareholders, Skilling said he wasn't interested in the job. Prosecutor Sean Berkowitz then discussed a meeting Skilling had in October 2001 in New York with Richard Foster, a principal at McKinsey & Co., the consulting firm where Skilling once worked. Foster grew angry with Skilling about the Lucent move, Berkowitz said, and in fact was so upset that he later called co-defendant Ken Lay to discuss Skilling's possible move.

It's a bit of a zinger, because Skilling has insisted that he didn't leave Enron because of any problems with the company. Rather, he's said he left because was tired, he found the role of CEO draining and that -- in one of the greatest corporate cliches of all time -- he wanted to spend more time with his family.

Skilling said he didn't recall Foster being upset with him, and he was unaware that Foster had talked to Lay. If Foster thought he was seriously considering the Lucent job, he was mistaken, Skilling said.

"Another person you disagree with?" Berkowitz asked. And with that, he passed the witness and we launched into redirect.

Defense attorney Dan Petrocelli picked up on the point, and said that Foster also got upset with Skilling for considering a return to Enron as the company was failing in late October 2001. Skilling said Foster was very critical of him for that decision, and that they haven't spoken since.

While the Lucent revelation was a bit of a surprise, it certainly wasn't a knockout blow. All in all, Skilling held up reasonable well under cross, although his evasiveness and combativeness may have undermined his credibility with the jury.

April 19, 2006

*The source of Power*

Before lunch, prosecutor Sean Berkowitz questioned Jeff Skilling about an Enron employee he allegedly threatened to fire for distributing a report by Off Wall Street that was critical of Enron. Berkowitz said only that the man's name was Keith Power, but didn't go into detail. Skilling denied he'd ever done such a thing.

Here's a link to a paper by Kathleen Brinkley, a law professor at Washington University in St. Louis that, on the seventh page, gives more insight into the Keith Power incident:

Sherron Watkins was not the only employee whose skepticism about Enron's finances resulted in de facto demotion. Keith Power was an Enron manager who monitored the Enron stock held in JEDI, a special purpose entity, and supervised JEDI's routine debt administration. After an executive told him about a negative Enron story posted on a Web site, Power delved more deeply and discovered that the story was based on a longer proprietary report prepared by a highly respected stock analyst. Power [sought] advice from Enron security personnel.

April 19, 2006

*A long time ago, in a galaxy VAR, VAR away...*

The discussion of value at risk, or VAR, continued until the lunch break. Jeff Skilling claimed that because Enron published its VAR numbers, investors had all the information they needed to understand how the company made its money.

Skilling maintains that Enron's earnings were immune to commodity prices, and that by publishing the VAR numbers, all investors would understand that. Prosecutor Sean Berkowitz then attempted to play a conference call with money managers from Alliance Capital, which was one of Enron's biggest investors.

Skilling, though, challenged that point, saying that he didn't think they were an investor in March 2001. Berkowitz then had to establish that they were, in fact, an investor and then noted that as an institution, they held the stock on behalf of individuals "and those people mattered, didn't they?"

"Yes they did, Mr. Berkowitz," Skilling shot back. "If we can't go with VAR I guess we go this direction but let's get back to the discussion."

Berkowitz then played three clips from a conference call in which Alliance managers questioned Skilling about VAR and about whether commodity prices impacted earnings. It's the same question Berkowitz had asked previously and that Skilling argued would be obvious to any investors.

"We don't have a commodity exposure," Skilling said on the call. "I don't care if prices go up or down. All I care about is whether I'm delivering product."

Skilling explained that some of the Alliance managers were new and "did not understand VAR." Which would seem to prove the point Berkowitz was trying to make.

April 19, 2006

*Raising the VAR*

Prosecutor Sean Berkowitz has moved on to a discussion whether Enron was a trading company or, as Skilling likes to say, a "logistics" company. It's a key issue, because trading companies carry far more risk than logistics companies -- whatever they are --

and as a result their stocks tend to trade at lower multiples. So if the market had known that most of Enron's money came from trading, it's stock would have dropped.

Berkowitz has discussed the famed Fortune magazine article from March 2001 that said Enron's earnings were a "black box." He also asked if Skilling had tried to fire an employee who was distributing a copy of a critical Off Wall Street research report on Enron that came out about the same time. "Absolutely not," Skilling said. "Where did that come from?"

To get at the point that Enron's risk was far higher than it conveyed to the market, Berkowitz is digging into the subject of value at risk, or VAR. As Enron's trading volume increased, the company also had to increase its VAR, which was basically a "speed limit" on the amount of risk it could assume, Skilling said. Skilling, though, argued that the volumes are what Berkowitz should be looking at.

In pulling up a chart on the VAR, Skilling said: "And you're going to compare this with volumes, right?" Berkowitz ignored him and went on with a question. Skilling put up his hands, rolled his eyes and said, "sorry, I guess we have to do that" presumably referring to redirect.

April 19, 2006

### *A witness or a cardboard cutout?*

During the mid-morning break, Jeff Skilling's lawyer, Dan Petrocelli, complained to a gaggle of reporters in the hallway that prosecutor Sean Berkowitz isn't allowing his client to fully answer questions.

"He literally could have conducted an examination putting a prop up there," Petrocelli said, according to the Chronicle's John Roper, who's in the courtroom today. Asked why he didn't object, Petrocelli replied: "I don't need to object. Jeff can answer the questions."

Except the whole point is that he supposedly can't. This is all part of the defense smoke screen. Skilling had four days of rambling testimony to share his view of reality with jurors. His job now is to answer the prosecution's questions, and he tries to evade almost every inquiry.

Don't forget the defense chastised government witnesses such as Sherron Watkins, who on cross examination didn't give succinct answers. What any lawyer on cross examination does is try to keep the questioning on track. If there are other issues that Skilling and his lawyers feel need more explanation, they have a chance to handle that on redirect.

At issue this morning is the transfer of Enron's electricity retail business into its wholesale operation. Previously, witnesses such as David Delainey said that was done to hide losses. Skilling maintains there were no losses to hide.

Skilling, by the way, is much more subdued than yesterday. The defense team must have done some intense overnight coaching, because Skilling's temperament is back to the more even keel he displayed on Monday.

April 18, 2006

*"Let's not move on"*

We finally got a flash of Jeff Skilling's famous temper. During the past two days, when Skilling seems about to explode, his attorney, Dan Petrocelli has jumped up with some sort of objection, giving his client a chance to calm down. This time, though, Skilling grew frustrated with prosecutor Sean Berkowitz questioning him about whether Skilling managed earnings to meet Wall Street estimates.

Skilling denied ever manipulating earnings, ever tapping Enron reserve accounts or ever directing anyone else to massage the numbers to meet estimates.

Berkowitz is trying to pin down when Enron set its quarterly earnings numbers -- at the end of the quarter, or when the numbers were released to the public. Skilling clearly believes the latter. When Berkowitz implied that Enron shifted earnings numbers to meet Street estimates, Skilling became increasingly angry.

Berkowitz finished with his line of questioning and said, "let's move on."

"Let's not move on," Skilling said loudly. "Let's talk about the financial reports." Skilling then proceeded to argue that Berkowitz didn't understand the numbers he was using. This is a recurring theme of today's testimony. A few moments earlier, Skilling offered to walk Berkowitz through the numbers one more time.

Berkowitz, who has maintained a steady monotone in his questioning, waited a moment, then calmly said:

"I know it is difficult for you to sit here and answer questions, Mr. Skilling ,and I know that you at times overreact to people who are critical, but if you could, just let me ask the questions and move along, Mr. Skilling."

Skilling's testimony is dripping with disdain and condescension, and these little dust ups aren't helping him.

April 18, 2006

*A picture worth 1,000 words of testimony*

Actually, it was closer to 4,000 words. I counted. In yesterday's testimony, Jeff Skilling acknowledged that he had given Jennifer Binder, a former girlfriend, $180,000 to start her own company, Photofete. Photofete, in turn, had a contract with Enron worth more than $450,000, although Skilling at one point said he thought it was only $3,000. Then again, $447,000 is probably just a "rounding error."

Skilling said he never disclosed the conflict of interest to Enron's board, and apparently hadn't mentioned it to his attorneys, either. So what did Enron get for its $450,000? Well, you can find a sample of Binder's work here.

Note the portraits of Skilling and his chief Enron rival, Rebecca Mark, in the middle of the bottom row.

Correction: The Azurix executive in the picture is actually Amanda Martin, who was president of Azurix. Thanks to those of you who pointed out the error.

April 18, 2006

*Open mouth, insert put*

Jeff Skilling is trying to explain the put option that Enron took on its own stock as part of the Raptor transactions. Skilling said "there was nothing unusual" about the put, and disagreed with the description that Enron was betting against its own stock.

"What it was was a hedge," Skilling said. "This is a hedge of value in an entity. It's an insurance policy." An insurance policy for whom? Certainly not for Enron. It was, in fact, an insurance policy for the LJM partnerships run on the side by Andy Fastow.

In fact, Skilling's own attorney acknowledged that the economic justification for the put was to pay LJM. That was, actually, the only possible economic justification.

Prosecutor Sean Berkowitz then presented testimony that Skilling gave previously to the Securities and Exchange Commission in which he said he didn't know if there was a put in the structure or why the company would have done such a deal.

The put was the method by which LJM made $41 million on the first Raptor transaction. It got that money out before it had anything at risk. Skilling said that didn't make sense because LJM's outside investors, like Citigroup and Credit Suisse First Boston would have questioned the deal. Not if they didn't have any risk, which after all, was probably the only reason they bought into LJM in the first place.

"Was Citigroup in on this conspiracy too?" Skilling asked in disbelief. Well, actually, Citi certainly doesn't have clean hands in the Enron saga, and it's paid dearly for it.

April 18, 2006

*A rise in contentiousness*

The tone of Jeff Skilling's cross examination is developing more of an edge. Skilling is contesting almost every assertion that prosecutor Sean Berkowitz makes, frequently responding that things aren't as simple as the government contends.

For example, Berkowitz is discussing the value of the troubled international assets. He reviewed documents from Enron's Risk Analytics and Controls group, or RAC, that found that bad deals Enron had done were resulting in pressure on earnings by 2000. Skilling disagreed. He maintains that the assets simply weren't earning the return that Enron found acceptable.

After several meandering attempts at answers, Berkowitz demanded a yes or no response. Was RAC saying that bad deals resulted in earnings pressure?

"No," Skilling said.

"Fine," Berkowitz replied, "the documents will speak for what exactly they were telling you."

"I guess so," Skilling responded.

A few moments later, Berkowitz said he wanted to move into a discussion of the Raptor deals. Skilling interrupted and said, "Can we just continue..." Then he stopped, facing an icy stare from Berkowitz, who had warned him yesterday about not trying to control the line of questioning.

"Ok , I'll wait," Skilling said. "I'm sorry." Then he threw up his hands as Berkowitz continued to stare at him coldly. "I'm sorry," he said again.

April 17, 2006

*Andy and the straw man*

Jeff Skilling said that even though he never asked Andy Fastow how much money he was making from the LJM partnerships, he wouldn't have cared if those numbers were made public. At a meeting in May 2001, Skilling said he told Fastow he was annoyed at the time Fastow was spending on LJM and that he was interfering with a deal to sell Enron's wind generation assets.

The plan was to allow LJM to remain in the bidding for the wind assets because Enron wanted a "straw man" to entice another potential suitor, UBS, to make a bid. Enron had no intention of selling those assets to LJM, he said.

Prosecutor Sean Berkowitz asked if that meant Skilling was telling UBS there was another bidder when there wasn't. Skilling again tried to squeeze out of a potential trap. He said LJM was a bidder, just not one that he intended to do business with.

Perhaps he expects the jury will believe that having a fake bidder is somehow less deceptive lying about the existence of one.

Berkowitz then asked if the reason Skilling wanted Fastow to sell his interest in LJM was because he didn't want to have to disclose Fastow's pay from the deals to the public.

"I was sick of this issue of disclosure, because I didn't care about it," Skilling said.

"I could care less if they were going to publish Andy Fastow's compensation as a disclosure. I think he was concerned about it."

Skilling's recollection of those conversation differ from what Fastow said when he was on the stand. It also contradicts Skilling's own calendar entry, which said that disclosure was the topic for the May 2001 meeting. Berkowitz pointed out that Fastow's notes of his meetings with Skilling are already entered into evidence.

"You have no notes of your conversation," Berkowitz said. "You have recollections that differ from your calendar entries. You have recollections that differ from other people."

Skilling asked what other people he was referring to. So Berkowitz launched into a list of witnesses who've testified in this case: Kaminski, Fastow, Glisan, Koenig, Rieker, Delainey, Rice, Hannon. Skilling acknowledged that all of them had recollections that differed from his own.

That's pretty much it for today, folks.

April 17, 2006

*Where's Jeff?*

Jeff Skilling, in discussing the Enron board meeting in Florida that was plunged into darkness because of a power outage, said he didn't know he was supposed to approve deals for the LJM partnerships.

The government produced documents from that board meeting that said he was supposed to do that, but Skilling said he was unaware of them at the time. The problem was that during the board meeting, when his role was discussed, Skilling was running in and out, trying to determine whether power would be restored or whether Enron should move the meeting to another hotel.

"What's the president of the company leaving the finance committee to find another hotel for?" prosecutor Sean Berkowitz asked. Well, Skilling explained, there "was a lot of discussion" what to do and when the hotel might get the power repaired. Moving the meeting would require relocating some 50 people on hand for it, so it was a big deal, Skilling said.

"You didn't have an assistant, Mr. Skilling, that could handle the logistics?" Berkowitz asked.

Berkowitz went on to note that when other executives, such as Ken Lay, left the meeting, the minutes reflected that. However, the minutes give no indication that Skilling came or went from the meeting, but they do show him answering questions on other matters.

Those minutes, by the way, included handwritten notes from Enron's then corporate secretary, Rebecca Carter, who's now Skilling's wife.

Skilling also claims he never saw the board presentation previously, even though, according to the government, he had made changes to it. Skilling said he didn't recall the changes.

Skilling also said he didn't know the board expected him to review the LJM deals. Berkowitz pointed out that two directors testified before Congress that they believed Skilling was approving the deals, and then, Berkowitz played a tape of that testimony.

So, basically, Skilling championed the idea of allowing the company's chief financial officer to run a partnership that functioned as a private equity fund to buy troubled assets from Enron, but the self-proclaimed "controls freak" then proceeded to exercise no control over the process.

April 17, 2006

*The picture of a conflict*

Prosecutor Sean Berkowitz is running Jeff Skilling through an investment in a small company called Photofete that he made in 2000 and 2001. Photofete was a startup by Enron photographer Jennifer Binder. Skilling said it was small deal, and even though the company had a small contract with Enron -- perhaps $50,000 or so -- he didn't bother to disclose in writing his personal investment to Enron's board of directors.

Skilling said he may have told Ken Lay about it, and that Lay himself may have invested in it, a side comment that I'm sure Lay appreciates.

Skilling acknowledged he may have violated Enron's conflict of interest policy, but indicated that it was a small deal that he didn't think much about. Besides, Skilling said, at the time he invested in the company, he didn't think it had a contract with Enron.

Berkowitz then produced checks that showed Skilling pumped a total of $180,000 into Photofete. He also showed the jury documents that showed Photofete's contract with Enron was in fact worth $450,000, which amounted to 70 percent of the company's revenue. Enron was, in other words, its biggest customer.

Did he know that?

"I may have. I just don't remember," Skilling said.

Did he disclose it?

I didn't occur to me," Skilling said.

Oh, and then, there was this little tidbit: It turned out that Skilling dated Binder in 1998 and 1999. So basically, Skilling set his former girlfriend up in business and got her a lucrative contract with Enron. No conflict there.

April 17, 2006

*'There are lots of things you don't tell everyone'*

The cross-examination of Jeff Skilling got a little testy after lunch. Prosecutor Sean Berkowitz is pressing Skilling on whether he disclosed to the marketplace that Enron couldn't sell its international assets for the value they were carrying on the company's books. Skilling keeps trying to say that the assets weren't undervalued, but that he couldn't sell them for a comparable rate of return.

Berkowitz contends that's a separate issue. He asked Skilling if he ever told investors that Enron couldn't sell the assets for the value the company placed on them.

"There are lots of things you don't tell everyone," Skilling said.

"This is one of the things you did not tell people, correct?" Berkowitz asked.

"My specific valuation of the assets I did not tell shareholders, I told the board of directors," Skilling said.

Berkowitz continued to press him on the asset issues, and Skilling began to get agitated. At one point, he said a corporation decides what its credit rating will be. Berkowitz countered that rating agencies decide that. Skilling said companies determine their ratings in conjunction with the rating agencies.

At that point, Berkowitz seemed to get a little annoyed at Skilling's lack of cooperation in answering even simple questions.

"I sat and listened to your testimony for four days, and I didn't make a lot of objections.," Berkowitz said. "I'd like you to answer my questions but I don't want to hear a lot of speeches, OK?"

Skilling said he would try, and eventually acknowledged that he never told the marketplace price at which he thought Enron could sell its international assets.

April 17, 2006

*Stand-up Skilling*

Perhaps the biggest surprise in this morning's cross examination of Jeff Skilling has been his irrepressible sense of humor. He just stumbled over it again.

Prosecutor Sean Berkowitz was talking about Enron's failed plan to sell troubled international assets in 2000, an effort dubbed Project Summer. Berkowitz is trying to show that Skilling, his ex-wife and his fiance all sold Enron stock in late 2000, when Enron stock was near its record and after Project Summer collapsed.

Skilling insisted that the two issues were unrelated. He maintains that the fact that he and several members of his family were selling at the same time was a coincidence. Then, he shoved his foot in his mouth:

"I was talking to my brothers at the break, and they said 'you didn't tell us to sell stock,'" he said, chuckling.

The normally affable Berkowitz, though, checked his sense of humor at the door. He again pounced on Skilling's attempt to make light. "You were talking to your lawyer at the break, too, weren't you?" he shot back. He then noted that Skilling frequently consulted with his attorneys during breaks in last week's direct testimony, too, at that at times he came back and corrected his earlier testimony.

Berkowitz noted that Skilling was a "top salesman" at Enron and that he advised other employees on effective communication techniques, including body language. He argued that Skilling had rehearsed his testimony and had four years to prepare for it.

Skilling denied he had rehearsed anything.

Berkowitz then pointed out the presence of a jury consultant for the defense team, going so far as to bring up her Web site, which noted, among other things, her expertise in "persuasive communications."

"Mr. Berkowitz, I have nothing to hide," Skilling said. "You can pitch it however you want, but I'm trying to describe what happened."

April 17, 2006

*How is Jeff Skilling like the Titanic?*

Neither of them seem to know when they're on a collision course. Prosecutor Sean Berkowitz was asking Skilling about Enron's international assets. Skilling is trying to say that while he didn't like the returns generated by those assets, he still believes, as he testified earlier, that they were "outstanding."

In discussing them, though, the subject turned to regulation, and Berkowitz made the point that regulation in developing countries is very different than regulation in the U.S.

"Unless you're in California," Skilling quipped, sitting on the stand with a satisified smirk.

"Do you think that's funny?" Berkowitz shot back.

"I think the regulatory environment in California is very similar to the regulatory environment in Brazil," Skilling said.

Berkowitz didn't let go: "You made jokes about California, didn't you?"

Skilling acknowledged that he had made a joke, which wasn't repeated in court, but did come up in his congressional testimony: "What's the difference between the Titanic and the state of California? At least when the Titanic went down, the lights were on."

Berkowitz asked Skilling if he regretted making that joke. Skilling didn't exactly answer at first. He hemmed and hawed and tried to go into a broader discussion of California, but Berkowitz cut him off, demanding a yes or no answer.

Skilling finally said that he did, in fact, regret making the joke. Berkowitz then returned to questions about the international assets.

April 17, 2006

*Meeting while Rome burns*

Just days after Sherron Watkins sent a memo to Ken Lay warning about potential accounting problems at Enron, Jeff Skilling said he met with Ken Lay, but never discussed it. In fact, Lay met later the same day with Watkins, but never bothered to ask Skilling if he knew anything about her allegations.

Instead, they discussed "business strategy." Even though he had left the company weeks earlier, Skilling was still serving as a consultant to Enron. So rather than talking about -- oh, say, the "handshake deal" that Watkins claimed Skilling had given to Andy Fastow for the LJM partnerships -- they talked about wellhead prices for natural gas.

In fact, Skilling said Lay never mentioned the Watkins memo or the issues it raised, and never asked him about the partnership deals with Fastow.

Nor did the lawyers hired for the so-called investigation ever contact him.

As Skilling said, it's about what makes sense -- or what doesn't.

April 17, 2006

*Back to basics*

Prosecutor Sean Berkowitz began his cross-examination of Jeff Skilling by picking up on Skilling's final statements from last week that he was taking the stand on behalf of Enron employees.

"Although you said you 'bled Enron blue,' you weren't Enron were you? It was a corporation," Berkowitz said. Skilling acknowledged that was true. Berkowitz then ran through a long list of former employees and shareholders who have testified during the trial.

"You owed those shareholders the duty of honesty, the duty of candor, right?"

"Yes," Skilling replied, giving the one-word answer he gave to most questions during the first five minutes of cross.

"The bottom line of all this Mr. Skilling is that you and Mr. Lay were the captains of that ship," Berkowitz said. "You had your hand firmly on the wheel."

This case is about whether Skilling and Lay breached that duty to shareholders and employees, Berkowitz said, as if reminding Skilling -- and perhaps the jury -- what was actually at issue in this case, a point that often seemed to get blurred in Skilling's testimony last week.

Berkowitz then went on to point out that Skilling was involved in most strategic decisions at Enron and was actively involved in reviewing employee performance.

Mark Koenig, Paula Rieker, Ben Glisan, Ken Rice, Kevin Hannon and Andy Fastow all were people Skilling promoted, he noted.

"The people we saw here testifying were high performing employees, people who 'got it,' people you promoted," Berkowitz said.

Turning the tables on a key defense argument -- that the government has produced few documents to support the charges against Skilling -- Berkowitz noted that aside from his resignation letter when he left Enron in August 2001, Skilling has produced no documents that he wrote -- no emails, no memos, no notes -- to support his claims.

"Is it fair that the most important thing the jury has to rely on is your word?" Berkowitz continued. "At the end of the day, Mr. Skilling, it's your word, your interpretation of things, your knowledge that's at issue."

"I think it's really a question of figuring out what makes sense," Skilling replied.

It was the perfect set up. Berkowitz used it to question Skilling on whether it made sense that he couldn't remember attempting to sell 200,000 shares of Enron on Sept. 6.

Berkowitz isn't ripping into Skilling, so much as just leading him through the improbability of his own recollections. It's not dramatic, but it may prove effective.

April 16, 2006

*Weigh in on CEO pay*

In my column today, I talked about a grass-roots effort, Investors for Director Accountability, begun by Dallas fund manager Shad Rowe. The organization wants shareholders to withhold votes for directors who approve exorbitant pay packages. If you'd like more information, or you want to weigh in with your own thoughts on what should be done about executive pay, you can post comments here. More information is also available the group's web site.

April 16, 2006

*Halliburton finally announces KBR sale*

Halliburton finally announced its plans to sell a stake in its KBR subsidiary, saying in a recent filing with the Securities and Exchange Commission that it will sell about $550 million worth of stock. All I can say is, it's about time.

April 14, 2006

*A different kind of 'fat boy'*

From time to time, things have gotten a little testy during the Enron trial, but one of the hallmarks of the case has been the civility that's been maintained among all the parties. It could be a lot worse.

And no, when he says "fat boy," he's not referring to Enron's strategy for gaming the California electric market.

April 14, 2006

*16,000 people can't be wrong*

The Securities and Exchange Commission has begun posting comment letters it's received on its proposal to revamp executive compensation disclosure. So far, the agency has received 16,000 comments, according to this post on footnoted.org.

Many of the responses are this form letter from the AFL-CIO, but the response has still been large.

Footnoted broke down the responses this way:

The comments basically fall into two key categories:

More, more, more: For the most part, individual investors not only think most executives are getting paid too much. They also think that companies are going to great lengths to hide their information on executive comp.

[snip]

Less, less, less: Top executives, particularly those at entertainment companies, are outraged that the SEC is looking for more information on executive compensation and seem particularly concerned about the rule to disclose salaries, but not the names, of the three top-earning employees, even if they're not executives. In a four page letter sent by a law firm representing CBS, Disney, NBC Universal, News Corp. and Viacom, the firm argues that it would be too difficult and time-consuming to identify the salaries of "talent" given the various relationships common in the industry and that it wouldn't provide investors with enough useful information.

The commission will review the letters and make a final decision on the new disclosure rules later this year.

April 14, 2006

*Weekend reading assignment: 'the whole Jeff Skilling'*

Jeff Skilling just wrapped up four days of testimony on his own behalf, so in keeping with that spirit, I thought we'd try something a little different this week. Here's a link to a paper put out earlier this month by the Heartland Institute, which, according to its Web site, is "a nonprofit organization devoted to discovering and promoting free-market solutions to social and economic problems."

It's written by Paul Fisher, a lawyer, and Jim Johnston, an economist retired from Amoco. I first spotted this link a few days ago on Tom Kirkendall's Houston's Clear Thinkers blog. As some of you have pointed out, Tom has basically taken the opposite view from me on the Enron Trial.

I link to the article because it's part of a disturbing trend, the belief that Enron was an unpreventable corporate failure brought on by random market factors. I find that disturbing because if you believe it, every business in America is at risk. Indeed, it could indicate our very system of capitalism is unstable.

My take is that, far from being the "whole picture" as it claims, the article actually has fairly narrow view of what happened at Enron. First, it implies that investors could have sold their stock as Enron rose, which is true. But that doesn't give management a license to deceive investors. Indeed, had management been more forthcoming about Enron's financial position, more investors probably would have sold.

The piece also takes a political bent, and blames much of Enron's demise on the California electricity crisis. Certainly, as I've said before, California's attempt at deregulation was poorly structured, but even Skilling contended that California was a small part of Enron's business.

The piece also says that Enron "underlings" may have lacked the mathematical sophistication to understand Enron's business. Yet, Vince Kaminski, the risk expert, was one of those underlings, and he protested Enron's hedging structures precisely because he thought it put the company in a precarious financial position. In response to his concerns, management demoted him. Skilling, by the way, said this week that Kaminski was happy about that.

The article's conclusion is that Enron benefited consumers by bringing greater efficiency to energy markets, and that consumers have suffered by its absence.

Enron may have done that in natural gas, but I'm not sure it ever achieved it any other market. Certainly, not broadband and water. Even if it did, do the ends justify the means?

Please discuss.

April 14, 2006

*Man in the breach?*

As his direct testimony wound to a close yesterday, Jeff Skilling mentioned a letter he'd received after his congressional testimony urging him to keep fighting. The letter was difficult to see in the courtroom, and Skilling didn't read it, but it referenced Ezekiel 22:30 in the Old Testament.

The chapter is about God's displeasure with the state of the government and the lack of morality, and he looks for someone who will stand up for what's right.

The verse is "Thus I have searched among them for someone who could build a wall or stand in the breach before me to keep me from destroying the land; but I found no one."

In some Bibles, the translation is "stand in the gap," but the point is the same. Skilling sees himself as the lone defender of righteousness against an oppressive and immoral government.

But a few other verses from the passage also have could have some interesting Enron allegories. For example:

"Woe to the city that sheds blood within herself so that her time has come, and which has made idols for her own defilement."

Or

"...I am brushing one hand against the other because of the unjust profits you have made..."

Or even the verse right before the one cited in Skilling's letter:

"The people of the land practice extortion and commit robbery; they afflict the poor and the needy, and oppress the resident alien without justice."

April 13, 2006

*Ending with a Bible verse and a plea of innocence*

Skilling attempted to read a letter that Charles LeMaistre, a former Enron board member, sent him soon after his testimony before Congress. It actually was a poem, which made reference to Chapter 22 of

Ezekiel. Skilling didn't read the letter, but the gist of it was don't give up.

With that, Skilling built to his crescendo:

> "We are innocent. By 'we' I mean Enron Corp. I am innocent of all of these charges, and I will fight for that for a long time. At this point, to me, there is a big issue about Enron Corp. Enron is now used as a term for everything wrong. Not only do I not believe that, I think that is a disservice."

Skilling isn't just fighting for his life, you see. It's not about him. He's fighting for all the good people of Enron, (cue the patriotic music) just like his co-defendant Ken Lay.

"Unless somebody takes a stand, and I think Ken and I are taking a stand, they are going to feel they were tricked. That is not the way it was."

Actually, Jeff, in case you hadn't noticed, you're taking the stand. But it was a heart-warming ending to his direct testimony.

Look for a grueling cross-examination to begin on Monday.

April 13, 2006

*A billion-dollar boo-boo*

Jeff Skilling appears to be wrapping up his testimony, running through a final refutation of the charges against him. He acknowledged frustration at not being able to sell international assets and of the pitfalls of the broadband business.

His take on broadband: "We made a mistake. It wasn't big. It was a billion dollars."

Skilling noted that he believed the business had the potential to be worth $30 billion. That, he said, was a risk worth taking. "If you make these kinds of bets ... you're doing a good job for your shareholders."

Any of you Enron shareholders out there agree?

April 13, 2006

*The long and short of selective memory*

Jeff Skilling can remember the intra-day fluctuations of the stock market on Sept. 17, 2001, but he didn't remember his attempt to sell more Enron stock than he ever had at one time nine days earlier.

"My recollection is pretty good," he said, referring to his memory of the Sept. 17 market activity. Good, and selective.

Prosecutors have accused Skilling of insider trading for attempting to sell 200,000 shares of Enron on Sept. 6. That sale didn't go through. Skilling later sold 500,000 Enron shares on Sept. 17. When he testified before the Securities and Exchange Commission, he said he sold because he was upset by the Sept. 11 terror attacks.

In this trial, Skilling has heard testimony from his broker that he tried to sell Enron on Sept. 6. He also heard a phone call of his conversation in which he attempted to sell. Until then, he said, he simply didn't remember making the call.

However, he does seem to remember details about placing an order to short shares of AES, a rival energy company, on the same call. Yes, the same executive who has decried short-selling against Enron then engaged in the same activity against a rival.

"I did what you're supposed to do. You take a position and you hold it and you see what happens," Skilling said. Then Skilling said he made about $15 million for holding that position for "three or four weeks."

Skilling said he was familiar with AES's business, and he thought they were a good candidate for a short sale. Well, he should have known their business. After all, it was AES that eventually bought the Nigerian barges from Enron.

Skilling still maintains that the only reason he sold the stock on Sept. 17 was because of Sept. 11. The attempted sale on Sept. 6 apparently doesn't matter in his version of reality.

Skilling also offered some stock advice to the jury. "If you ever sell stock, put a limit order on it," he said, turning toward the jury box. "It's something that I think most people should do on execution."

Just what every juror needs: investment advice from a failed businessman.

April 13, 2006

*Jeff Skilling, grease monkey*

Skilling is discussing his money and assets. He noted he owns a 2000 "top of the line" Mercedes sedan and a 1999 Toyota 4 Runner that his son drives. He also has 1995 and 1996 Land Rovers in the garage.

"They're English cars, so they don't work," Skilling said.

"You like working on cars?" his attorney Dan Petrocelli asked.

"Yes. That's why you buy English cars because there's always something to work on," he said.

Skilling still owns his 8,000-square-foot River Oaks manse, which he paid $4 million to build. He can't sell it because the government has frozen his assets, he said. However, he owns the land underneath it outright.

But, as we know, square footage is a strong indicator of performance, so Skilling must be doing OK.

He also owns a $350,000 condo in Dallas, he said. And he has a stash of municipal bonds worth $47 million that he can't touch because of the government freeze.

"You have paid a pile of money for lawyers, haven't you?" Petrocelli asked.

"Yes," Skilling said, noting that money for his attorneys's fees came from trusts set up before the government's freeze.

"All of that has been spent," Skilling said.

"In fact, you owe us a little money," Petrocelli said.

Maybe Skilling could pay off the balance with his Enron stock.

April 13, 2006

*"This was my mistake'*

This may be as close as we get to a mea culpa from Jeff Skilling. Discussing the problems with Enron's broadband division, Skilling noted that by the summer of 2001, the division was in trouble and was forced to cut jobs.

Now, a few months earlier, when he said that it was worth $40 a share, or $32 billion, he wasn't lying, mind you. But things tanked in a hurry.

He erred, he said, in not predicting the slowdown.

"This was my mistake. The buck stops at the top. I'd been a supporter, and supported our move into the broadband business, and I'd been wrong. We'd misinterpreted the market in the broadband business. We spent a lot of time and a lot of money going into the business. This was my failure. I made a mistake."

Well, that's an improvement over the Mr. Bill defense....

April 13, 2006

*Ohh Nooo! It's Mr. Short Seller!*

Jeff Skilling is recounting the management meeting at which he allegedly uttered the "they're on to us" remark. That was what former broadband executive Kevin Hannon testified earlier that Skilling said after he read an analyst report by the firm Off Wall Street that was critical of Enron.

"I know you're outspoken, but are you that outspoken?" his attorney, Dan Petrocelli asked.

"Yes," Skilling replied, chuckling. The courtroom erupted in laughter, and it took Petrocelli a moment to compose himself.

Skilling acknowledged he may have made the remark, although he didn't remember saying it. If he did, he said he was joking.

"I don't remember the specifics of this, but I do remember that there was this document, this analyst report," he said, adding that he'd never heard of the firm. He read the first page or page and a half of the report, which was probably about 15 pages, he said.

"My reaction to it was this was foolish," Skilling said. "I don't usually use the word 'foolish.' This was ... what's the best word?

"Foolish is fine," Petrocelli said quickly.

Skilling said he and David Delainey often did jokes about the old Saturday Night Live character Mr. Bill, a man made of Play-Doh who each week was put in dangerous situations by Mr. Hand that usually resulted in serious harm prefaced by the expression "Ohh Nooo!"

Skilling then demonstrated, talking in the high-pitched Mr. Bill voice and waving his hands. So its was something like "Oh, no, Mr. Bill. Oh, no, they're on to us."

Before moving on, Skilling turned serious, adding:

"This piece of paper was very clearly a document that had been prepared by someone who was fronting for short sellers. The information in it bordered on very unusual, very strange and very incorrect information."

Maybe the vast short-seller conspiracy is led by...Mr. Sluggo!

April 13, 2006

*Short selling was OK when he did it*

Jeff Skilling is once again discussing the vast short-seller conspiracy that he believes brought down the country's seventh-largest company by, apparently, asking for a balance sheet.

You may recall that Skilling lashed out at short seller Richard Grubman on a conference call for making that request. I've already written about the absurdity of Skilling's contention that short selling brought down Enron in this earlier column.

Today, Skilling tried to shed a little light on his feelings. Short sellers basically invest in a stock by borrowing shares, then agreeing to pay them back at a later price. If the stock falls during that time, they make money. If it rises, they lose.

"There's nothing wrong with short selling," Skilling said, noting that Enron itself engaged in short selling.

"Anytime we were selling products like natural gas to a consumer and went out to cover that, we were shorting it. There's nothing wrong with an individual short selling stock. I think it's benefical to the market place."

The problem wasn't short sellers, per se, you see, it was the short-selling conspirators.

"I believed there was a group of people working together as a group to purposely attack the stock. I certainly believe that it was inappropriate that many people would get together and parcel out their responsibilities for attacking a stock."

"You thought they were attacking their stock?" his attorney, Dan Petrocelli asked.

"We knew they were attacking the stock," Skilling replied. How? Well, you see, these shadowy assassins of equity went out and spread false rumors about the stock.

"This is a typical short seller trick. They will take a short position in your stock, and then they will send someone to your analyst conference to ask a question in such a way to suggest you're hiding something. It's an unattractive [but it's one] the ways these people operated."

"Can we see a balance sheet?" is a question that suggests you're hiding something? Only if you actually are.

April 12, 2006

*Accounting in Skillingland*

Things are really getting weird over on Rusk Street. I was in court briefly this afternoon, while Jeff Skilling continued to relive his Enron fantasy. Unfortunately, I had to leave before he slipped this little gem into his testimony, which I share with you now courtesy of the TrialWatch blog:

When Jeff Skilling referred to "big, big numbers" to analysts in a 2001 conference call when discussing Enron's first quarter results, he was referring to square footage growth, not dollar amounts, he told jurors Wednesday.

Oh, yeah, because office space is the primary barometer for business growth. Yeah, I can remember back in the day, listening to earnings calls, and a CEO would say, "we added 100,000 square feet this year, but next year we think we increase our footprint by 250,000 square feet." The stock would soar.

Enron was complex, see. It wasn't an energy company, and it wasn't a trading company, and it turns out it wasn't even a "logistics company," the term Skilling once made up to describe it. No, it was, in fact, a real estate company.

April 12, 2006

*Another whopper before lunch*

Yesterday, just before lunch Jeff Skilling made the statement that Wall Street research was staunchly independent. Today, he prefaced the lunch break by claiming that Enron's performance couldn't be measured by sales or earnings.

Skilling said that at Enron only two numbers could accurately correlate to the company's worth: Volume and head count.

He said using simple stats such as sales dollars to assess the value of the company did not work because of Enron's complex business, which in part counted on hedging widely fluctuating prices.

Danger Will Robinson! Danger! Alien accounting approaching! The No. 1 red flag for any company is when it starts arguing that earnings aren't an accurate yardstick. Perhaps Skilling was so busy remodeling his lawyers' office that he didn't notice the tech boom, and this kind of thinking, ended badly. He seems to be mired in dot-com delusions.

If your business is "too complex" to be measured by the basic standards of performance, then you shouldn't be selling stock to the public. And the public darn sure shouldn't buy it.

I know, I know. I "don't get it." I guess you have to live on the other side of the looking glass to appreciate the genius of Enron, the thinking that turns the irrelevant into the meaningful, and summarily dismisses the company's utter collapse and ruin.

The bottom line is the bottom line. Nobody buys a stock based on volume, and certainly not on head count. Volume matters only as it relates to revenue. Head count is an expense. It represents a cost to shareholders, not a benefit.

It's interesting, though, for Skilling to be demonstrating so clearly for the jury the flawed philosophy at work inside Enron.

April 12, 2006

*Welcome Skilling lawyers, Part II*

Because of all the comments from this post yesterday, I've been sitting out of the trial this morning, doing a little more research. In checking other blogs, as well as my own more thoroughly, I have found a total of 21 posts on this blog from IP addresses registered to O'Melveny Myers LLP, the law firm that represents Jeff Skilling.

In addition, three posts from those addresses were made to the Enron:TrialWatch blog, and 10 were posted on our Legal Commentary blog.

I have a call in to O'Melveny to see if the firm is aware of this situation, and what its policies are with regards to employees posting comments.

Personally, I welcome the comments, even the snarky ones that question my integrity. This is, after all, supposed to be a discussion, and why shouldn't Skilling's lawyers be able to weigh in? However, I think under the circumstances, the comments should indicate whether the people making them have any connection to the case.

By the way, some of you were wondering if prosecutors had posted any comments. So far, I haven't been able to identify any as coming from the Department of Justice. But as many of you know, the Internet is a great sea of anonymity, so it's impossible to be certain. For that matter, I haven't identified any comments from Ken Lay's defense team, either.

I also wanted to address the issue of identifying IP addresses. I don't make a habit of it. This was prompted by yesterday's comment from "Jeff," which seemed to indicate he or she was in the courtroom. I see this situation as a special case. Quite frankly, I don't normally have the time, nor do I want to take the time, to check out every IP address that comes across.

That said, anyone who posts anything on the Internet ought to realize that they're putting their information in the public domain. Keep in mind that almost every e-mail that was ever sent or received at Enron is now available for anyone to see.

And finally, because some people asked, this is a link to the Chronicle's privacy policy.

Sadly, since yesterday's post, I haven't received any more comments from the OMM folks. I hope I didn't scare them off. I'd sure miss "guys" like "Jeff," "dt," "Jake," "Preston," and especially mean ol'"Eddie."

April 11, 2006

*Only thinking of shareholders*

Jeff Skilling is telling jurors his version of the creation of the LJM partnerships, which he and the board allowed Enron's chief financial officer, Andrew Fastow, to run on the side. Skilling said Fastow was never supposed to make money on the LJM deals, apparently contradicting Fastow's testimony of a "bear hug" profit guarantee.

LJM wasn't a surrogate or a puppet for Enron, and Enron didn't control it, Skilling said. It's first transaction involved hedging an Enron investment in a tech startup. Because of changes in accounting rules, Enron set up LJM as an independent company. Nevermind that it was run by Enron's own CFO.

Skilling said there were "alternatives" to hedging the investment through LJM, although he didn't say what those might have been. Skilling said he never forced anyone at Enron to use LJM. While he acknowledged that there was a potential conflict in the LJM arranagement, the benefits -- such as the speed with which Enron could sell assets -- would be good for Enron's shareholders. In fact, Enron would use LJM only for deals that were good to shareholders, Skilling said.

And then the first deal they do involves Enron management buying a put option on its own stock -- essentially betting against those very investors. Skilling didn't explain how that was good for them.

April 11, 2006

*Welcome Skilling legal team*

I was joking, but apparently Dan Petrocelli and his under-lawyers really do read this blog. Earlier, when I mentioned that Petrocelli seemed to be speaking more loudly today after his gentle questioning of Skilling yesterday, I got a comment from a reader who identified himself -- or herself -- as ‘leff.” You can see the comment below this post.

The IP address for that email is registered to O’Melveny Myers LLP, Petrocelli’s law firm. Likewise, the comment from “Donny” on this post is from the same O’Melveny-registered address, according to a search of records maintained by the Network Information Center.

Our upgraded blog software here at the Chron makes it easier to sort comments by IP address, so I did a little more research. In all, I’ve found 15 messages from the O’Melveny IP address since last September, with a definite pickup since the trial began.

Some have reflected on the testimony of prosecution witnesses, such as this one by “dt” dealing with Mark Koenig’s plea bargain. Others have tried to argue the defense’s case, like this one by “Jake” in February. Talk about trying the case in the press.

The first comment from the O’Melveny-registered address came in September, from our old friend “Eddie.” You can find it after this post, which had nothing to do with Enron or the trial. It is simply a screed against me and, basically, everything I do.

My favorite, though, is this one from “Preston.” It came just before the trial began, and “he” questioned “the identity of those whom Mr. Steffy represents.”

Well, “Preston,” I believe that’s what psychiatrists call projection. It makes me wonder who’s paying you.

At any rate, I appreciate the interest in my blog, and I look forward to future comments from you guys.

April 11, 2006

*Skilling drops a whopper*

Jeff Skilling is now talking about Wall Street earnings estimates, and how he didn't know what the estimates were in 1999 and certainly never tried to tweak Enron's earnings to meet them. Then his attorney asked him to explain how Wall Street analysts generate estimates.

Skilling said analysts used "detailed models" to come up with their numbers. "They all do independent analysis," he said.

This was 1999. This was the heyday of Henry Blodget and Jack Grubman. Perhaps Skilling is betting that none of the jurors will recall the $1.4 billion that 10 Wall Street firms paid to settle charges of tainted research -- analysis that was gussied up to appease big banking clients like Enron.

Research in 1999 was anything but independent. The "detailed models" were little more than taking numbers from the company and plugging them into an Excel spreadsheet.

April 11, 2006

*How to keep score, CEO style*

In explaining his motivation, Jeff Skilling says he had no lust for money, only a deep-seated love for Enron. In 1999, he was worth $100 million, so he had no motive to lie or fudge Enron's results, because he was already rich. He even mentioned that when he was named company president, he left about $50 million worth of compensation on the table.

See, money doesn't matter, right? Except that he knew as president he would make up that $50 million pretty quickly, and in fact, he did -- and more. The problem with this defense is that CEOs aren't like the rest of us. It's not that Jeff Skilling needed more money to make ends meet. In the world of high-flying executives, money is the yardstick of success.

That's why Wall Street shells out millions to star brokers. That's the reason companies pay exorbitant salaries to their top executives. No one needs the money, they simply need the bragging rights. Guys like Skilling measure their success in terms of the number of places between the dollar sign and the decimal point.

After all, Skilling was a guy who told us yesterday he thought he could raise $3 billion in a matter of weeks.

Wealth raises the bar for failure. When you're worth $100 million, seeing your stock options lose value is unacceptable. Seeing your company not exceed what everyone on Wall Street is expecting is unacceptable. It's like being forced to fly commercial.

April 11, 2006

*A smart guy in the courtroom*

Jeff Skilling is testifying about his net worth in 1999, which he said that year was about $100 million. Much of that, he said, came from his ownership interest in Enron Capital & Trade, which later was converted to Enron stock.

"By 1999, I think ECT was the most successful startup company in the United States behind Microsoft," Skilling said. He said this with a straight face, as if the growth of a division in a large company is the same thing as a stand-alone startup. As if a Microsoft reference -- the ultimate cliche of business hype -- is going to help him on the witness stand.

Skilling's lawyer, Dan Petrocelli, is running his client through 1999, the first year of the alleged conspiracy in the government's indictment. Skilling said he never told anyone at Enron to lie or cheat or break the law. Petrocelli ran through a list of prosecution witnesses -- Fastow, Glisan, Ricker, Rice, and so forth. Skilling said he never instructed them to do anything illegal.

"I am absolutely positive," Skilling said. "There is no truth whatsoever to that allegation."

Petrocelli asked if there was something that the jury wasn't being told. Was there something about 1999 that they didn't know that they needed to?

"No, 1999 to my recollection was a very good year for Enron," Skilling said.

Petrocelli has taken to asking questions that seem to anticipate things the prosecutors will address. For example, he asked Skilling if he thought he was so smart that he could tell lies and get away with it. Skilling said no. Petrocelli then asked him if he thought he was smart. Skilling said he was. Then Petrocelli asked if he was embarrassed to say that.

"Sometimes I'm a little hesitant about saying it, but no, I'm smart," Skilling said.

Petrocelli also attacked the idea that Skilling was motivated by greed, which is why he brought up the net worth.

Petrocelli: "Did you feel you needed to break the law for money?"

Skilling: "Absolutely not."

Petrocelli: "Are you consumed by greed?"

Skilling: "No."

Petrocelli: "What are you consumed by?"

Skilling: "I was consumed by this company."

No doubt the defense is hoping the jury will be equally consumed by this line of questioning, because it skirts the prosecution's point in the indictment. So far, the defense has addressed only 1999. The indictment cites that as the root of the alleged conspiracy because that's when some of the early side deals, such as the Nigerian barge transaction, began. That point, at least for now, is being conveniently avoided.

April 11, 2006

*Maybe he reads this blog...*

Yesterday, I made the point that the normally bombastic Dan Petrocelli seemed to be showing a different demeanor in asking questions of his client, Jeff Skilling. Petrocelli was using low tones, cooing questions at Skilling.

Today, as Skilling's testimony resumed, the old "Petro" was back. Before he began, he told the jury: "I got the word yesterday. My voice was apparently trailing off."

And my MSM friends still poo-poo the power of blogs.....

April 11, 2006

*'So many lies' he put them on his Web site*

After former Enron treasurer Ben Glisan testified against him, an angry Ken Lay emerged from the courthouse and declared "I've never heard so many lies in one day in my life." Now, he's put them on his web site.

In the legal section of his site, www.kenlayinfo.com, Lay, for some reason, decided to post transcripts of the testimony of two prosecution witnesses: Glisan and former chief financial officer Andrew Fastow.

Lay's web site is typically an electronic echo chamber, a place where he can spin out his version of reality. Since the trial began, he's used it to post his attorney's opening arguments as well as selected defense exhibits admitted as evidence. And, of course, there's transcripts of testimony from defense witnesses.

So why testimony from Glisan and Fastow? Glisan's testimony was particularly damaging to Lay. I spot-checked some of the pages and didn't see any signs that Lay had inserted his own comments. It may be a sign of some issues Lay intends to address when he takes the stand.

April 10, 2006

*Computer problems*

The Lay-Skilling defense team is having some computer woes. It seems they've filed a subpoena to retrieve a PowerPoint presentation from the hard drive of former Enron broadband executive Ken Rice. Prosecutors have refused to turn over the document because they say it isn't on the hard drive that they seized.

Rice's attorneys attempted to sort out the matter after jurors were excused for the day. They told Judge Sim Lake that Rice made the presentation on his computer at Enron then either e-mailed it or copied it to a disk and moved it to his home PC. In 2001, his home PC -- a Compaq, the attorney noted -- crashed. Rice kept the failed hard drive though, and a couple of years later had it copied to a new PC at his house. He then gave the original drive from the crashed PC to prosecutors.

Now, that seems a little odd to me, but it gets weirder. It seems the PowerPoint isn't on the original hard drive the prosecutors have. It's only on the copy that Rice made at his home. Even Rice's attorneys admitted they couldn't explain the situation. As my son would say, "hmmm, very suspicious...."

Meanwhile, they don't want to give the defense team unfettered access to all the personal information on Rice's current hard drive, so the judge will try to sort out the issue.

They might want to call in to this week's edition of Technology Bytes, where I'm sure they could get some ideas for fixing the problem, even without the assistance of a certain guest host.

April 10, 2006

*Dissecting the indictment*

Dan Petrocelli, Jeff Skilling's attorney, wrapped up testimony today by referring to portions of the indictment against his client that referred to allegations of fraud committed at Enron in 1999.

Petrocelli asked if Skilling was aware of any fraud at Enron that long ago, when the company was in its heyday.

"I know of no reason why Enron would resort to fraud in 1999 or any other year in which I was involved," Skilling said.

Skilling had spent much of the afternoon describing Enron's evolution and financial success during the 1990s.

"Was the company in fact doing better than ever in 1999?" Petrocelli asked.

"Unquestionably." Skilling responded. Soon after that, court adjourned for the day.

April 10, 2006

*Off to the courtroom*

I'm going to sit in the main courtroom for the rest of today's testimony, so blogging will resume when court recessess for the day.

April 10, 2006

*The return of the CEO*

After a 15-minute afternoon break, Jeff Skilling has transformed as a witness. His earlier testimony was cautious and rather lackluster, probably by design. He was addressing unpleasant subjects like Enron's collapse and the suicide of his friend Cliff Baxter.

But since the break, Skilling has become animated as he explains to jurors the concept of the "gas bank," the vehicle Enron used to create the natural gas market in the early 1990s. He's now explaining various aspects of Enron's business, much as if he is once again conducting a road show for Wall Street investors. He's gesturing frequently, and when he refers to Ken Lay, more than once, he's motioned in Lay's direction or nodded toward him. At one point, Skilling even did a light-hearted impersonation of a cigar-chomping Rich Kinder, a former Enron executive.

Now, he's recounting the opening of electric markets and how the electric utility lobby dubbed him "Dr. Doom."

First, we had references to Elektro, (the Brazilian power plant, not this guy), and now Dr. Doom . The comic book references surrounding Enron are getting almost as thick as the Star Wars ones.

April 10, 2006

*Recycled cliche alert*

Jeff Skilling just regurgitated the same bad Texas cliches that his attorney used in opening arguments. In referring to the oil bust of the late 1980s and its economic effects on the local economy, Skilling said Houston had a lot of empty office buildings. "They called them shotgun buildings, because you could shoot a shot-gun right through them without hitting anybody." A few minutes later, he referred to unused oil rigs "rusting in the sun."

Petrocelli used the same terms, word for word, in his opening arguments. Now, Petrocelli's from Los

Angeles, so we might be able to forgive him. But Skilling should know better.

One more time: rust is not caused by sunlight, and the vacant office buildings were called "see-through buildings." Skilling may have been confusing the term with shotgun shack.

April 10, 2006

*The wonders of modern technology*

Aha! We're getting some answers to the important stuff, now.

Back in mid-January, when Skilling was granting his pre-trial PR spin-terviews, he claimed to have reviewed 1.5 million documents in preparation for the trial. You may recall that, after careful mathematical calculation, I determined that meant he had reviewed one document a minute for four years.

In his testimony, today, though, Skilling tried to clear things up. He said he's been reviewing documents using computer searches, which enabled him to go through "thousands of documents." Not exactly 1.5 million, but then again, when he made the earlier claim, he wasn't under oath.

April 10, 2006

*What did he say?*

There's a weird element to this entire testimony, and it isn't coming from Jeff Skilling. It's his lawyer, Dan Petrocelli.

Since the trial began in late January, Petrocelli has spoken loudly enough that he's been easy to hear over the audio feed in the media room. Even when he's engaged in his typical pacing in front of the jury box, Petrocelli's questions have been among the clearest of all the attorneys.

Today, though, with Skilling on the stand, many of his questions are barely audible. It's as if he's speaking to Skilling in soothing tones. It's a different demeanor than what jurors are used to, which can be a mistake for the defense.

April 10, 2006

*A momentary lapse of recall*

Just before lunch, defense lawyer Dan Petrocelli asked his client, Jeff Skilling, about his sales of Enron stock in 2001. Skilling, you may recall, sold a big slug of Enron stock after Sept. 11. He said that was because he was distraught over the terror attacks.

Prosecutors showed that he had contacted a broker on Sept. 6 and tried to sell the stock, but the transaction didn't go through. Prosecutors played a tape of Skilling attempting to place the order with his broker, and even put the broker on the stand.

Skilling, though, said he didn't recall attempting to sell the stock earlier, a very convenient memory lapse.

April 10, 2006

*"You wanted to die"*

An emotional Jeff Skilling is recounting his difficulty in watching Enron unravel in late October 2001. He hasn't teared up, but he has that sad-eyed puppy dog look, similar to what we saw before Congress. Occasionally, his bottom lip quivers a little. He recounted how on a trip to Miami, he began to realize that Enron might not recover:

"About all I was doing at that time was going to pieces. It just dawned on me that my company was struggling for its life at that point. I started drinking. I just kept drinking. I was very depressed. We went back to our hotel, and I cried."

By late October 2001, he said he knew Enron was unraveling. The company was drawing down its credit lines, and he knew that would spook the market. Enron had done the same thing when they were on the other side of deals when a trading partner showed signs of financial weakness: pull credit lines, call margins, stop extending additional credit to counterparties.

In fact, though, trading partners had been pulling out of deals with Enron as far back as May, worried about the company's deteriorating finances and shrinking market value. But in Skilling's world, apparently this was a new development.

He and Cliff Baxter tried to raise $3 billion to save Enron. Skilling said he planned to put in $70 million of his own money, cash. "It was everything liquid I had," he said.

The deal fell through after Baxter changed his mind and said he didn't want to participate.

Skilling also talked about his feeling as Enron filed bankruptcy and he saw employees put out of work. "This was inconceivable," he said.

"How did it make you feel?" lawyer Dan Petrocelli asked.

Skilling: "You wanted to die."

Petrocelli: "Did you feel responsible?"

Skilling: "Yes."

Petrocelli: "Do you feel your leaving contributed" to Enron's demise?

Skilling: "Yes."

Petrocelli: If you had it to do over again, would you have left?

Skilling: "No. I will regret always that I left Enron."

Skilling remained composed, though, even when discussing Baxter's suicide. The prosecution objected to that discussion, but Judge Sim Lake allowed the line of questioning to proceed.

April 10, 2006

Here he comes to save the day

After Enron began its death spiral in late 2001, Jeff Skilling called Ken Lay and begged Enron's founder to bring him back. Even though Skilling had left a couple of months earlier because, as he testified a couple of moments earlier, he felt Wall Street had lost confidence in him, he now believed he was the only one who could save Enron.

Lay's response was a non-committal: "That's interesting." Skilling said he thought his return would be a strong show of support that would boost confidence in the market. Lay, apparently, didn't agree, but in the meantime, Skilling called the new company president, Greg Whalley. He said he told Whalley they needed to get to New York right away to assuage the market's concerns. "I told him to call aviation and and tell them to warm up the jet," Skilling said with a chuckle.

He was back, baby. Or was he?

Skilling said he waited by the phone all night for the final OK, and it never came. The next day, Whalley told him the company had decided against Skilling's return. Whalley said Enron's board was concerned that bringing Skilling back "was just going to be one more weird thing related to Enron."

Skilling said he respected that decision. "I wasn't there. I wasn't in the building. I had a lot of confidence in Ken."

I'm sure Lay, sitting a few feet away, appreciates the endorsement.

April 10, 2006

*The vast short-seller conspiracy strikes*

Jeff Skilling said he was listening to Enron's October 2001 conference call while sitting in the car with his brother in Fredricksburg, even though he'd left the company two months earlier. His reaction?

"I was thrilled," Skilling said. He believed the operating numbers were strong, and the $1.2 billion write down in shareholder equity didn't concern him. "These are non-cash charges, Skilling said. "My brother and I high-fived each other. I just thought it was doing great."

He was disturbed when he saw the Wall Street Journal coverage the next day, which raised questions about Enron's dealings with the LJM partnerships that former Chief Financial Officer Andrew Fastow ran on the side.

"Here the company had just had an outstanding quarter, and they were talking about LJM. It was a very negative article. It was insinuating that there was some sort of bad motive or bad intent related to this LJM transaction. I thought they were totally out of line. We'd had one of these before with the Fortune article [in April 2001]. It was my view that it was planted by short sellers."

He believed the vast short-seller conspiracy also was responsible for the Wall Street Journal story, too.

Ah, yes, the evil short-sellers out there destroying good companies.

Skilling called Ken Lay and said he believed that the VSSC had 10 or 15 articles "in the can" waiting to be printed by their shills in the press. And so he urged Lay to, as Andy Fastow said, "open the kimono."

"Ken was in agreement that he thought this was organized and that we needed to get out ahead of it." Still, the kimono remained closed.

I know Skilling's a little busy at the moment, but he might want to read this post by hedge fund manager Bill Fleckenstein today from MSN Money, which includes this statement:

Let me repeat something I've said before: Short-sellers do not mismanage companies. They don't cause them to stuff the channel, build receivables or cook the books generically. Company managements do that. Short-sellers catch them.

While not always right in their investigations, shorts provide valuable research in many cases. I know that whenever I'm long a stock, I want to hear what the short story is.

(Hat tip to Gary Weiss.)

For that matter, Skilling might want to refer to this post by Dallas Mavericks owner Mark Cuban, who knows a thing or two about building companies and investing, which makes a similar point. (Cuban, by the way, also shows how executives can profit from a large short position in their stock. That situation doesn't apply to Enron, but it's interesting nonetheless.)

April 10, 2006

'Part of the problem'

Explaining why he conveniently left Enron just months before it collapsed, Skilling is sticking to the "spend more time with the family" excuse. So far he hasn't addressed what he told the Wall Street Journal, that Enron's sagging stock price also was a factor.

"I was emotionally tired," he said. "I put so much of my life into it. Every day was emotionally intense. I had not spent the time that I should have spent with my family."

By 2001, Skilling said he began to realize that the balance of work and family had gotten skewed. "That balance was totally out of whack and it had to change."

He spoke of a long vacation he took in Africa with his brother and said "I didn't want to come back." When he came back, he met with Lay, and he said he believed Lay could see in his eyes that he wasn't happy. He said he told Lay "I hate this job."

Skilling also said he drafted a resignation letter as early as April 2001, which would have been a few months after he got the chief executive's job. On July 13, 2001, he said he told Lay he wanted to leave. "I told him I believed I was no longer part of the solution, I was part of the problem."

And what was that problem? Not Enron's deteriorating financial condition, because Skilling still argues that Enron was in top financial health at the time he left. No, the problem as Skilling saw it was the controversy over the California energy crisis and the fact that investors were beginning to wise up to Enron's shenanigans.

"I felt that in some ways I had become a lightning rod for that controversy. The short sellers were all over the stock." He was having a hard time getting investors to understand the Enron story, he said. "In some ways I had lost credibility with the street. The now-infamous 'assohole' quote was being used as a sign of arrogance. It wasn't meant that way."

No, of course not. It was a term of endearment.

Skilling went on: "The reason I left was I was ready to go. My head wasn't in it anymore."

As he waits for Petrocelli to serve him questions, Skilling shifts nervously in his chair and sits with a boarding-school posture. He seems to be loosening up a little as the testimony progresses. Skilling also is doing something else that other witnesses haven't: He refers to Ken Lay as "Ken" instead of "Mr. Lay," and in responding to one question he called his lawyer "Dan."

One thing is clear, though. Skilling doesn't sound like he's been coached. The defense seems to be making good on its promise to present the unvarnished Skilling.

April 10, 2006

## Skilling: "I am absolutely innocent"

That's how Jeff Skilling responded to charges he's waited some four years to confront. Skilling took the stand and admitted to being nervous as his testimony began. His lawyer, Dan Petrocelli asked him why.

"In some ways my life is on the line, so I'm nervous," he said. "I am absolutely innocent."

Petrocelli began by questioning Skilling about why he didn't cut a plea deal with the government like so many witnesses in this case who have testified against him.

"I would say that the vast majority that testified here are in fact not guilty," Skilling said. "It's not in my nature not to fight something like this. The charges against me are wrong....I will fight those charges until the day I die."

Skilling went on to express pride at working for Enron.

"We were making the world better, in my opinion," he said. "That company was a fine company."

April 10, 2006

*Drilling Derrick*

If Jim Derrick, Enron's former in-house counsel, had known that Andrew Fastow made some $15 million off of one transaction, would it have raised a red flag? That's what prosecutor John Hueston is asking on cross-examination.

Derrick's response: "perhaps."

Derrick, by the way, didn't know that because he didn't read the final letter Vinson & Elkins sent to the company summarizing its investigation whitewash of the Sherron Watkins memo. Yet he maintains he took the investigation of the Watkins memo seriously. The V&E probe didn't uncover much, but it did provide a hint of what Fastow was doing.

Prosecutor John Hueston moved on to the "risk memo," the internal assessment Derrick wrote analyzing the possible consequences if Enron fired Watkins after she sent her memo to Lay warning about the company's impending financial problems. Derrick told Hueston that if he believed a whistleblower at Enron was about to be fired for speaking up, he would intervene.

"You spent money to see what the risk would be to Enron if Enron fired her anyway," Hueston said. Derrick disputed that.

The risk-assessment memo referred to Watkins as an "opponent" and weighed what would happen if Enron "discharged" her.

But Hueston pressed on, noting that the entire memo was not about protecting Watkins, but about protecting Enron. He then went through the memo point by point, showing how each one benefited Enron and did nothing to protect Watkins.

"This memo is simply Enron weighing the pros and cons of firing Ms. Watkins" despite laws preventing such retaliation.

Derrick said it wasn't. Hueston, though, having made his point, moved on.

April 10, 2006

*Did Skilling pay for Watkins bashing?*

This article from the latest issue of Business Week ends with an Enron-related bang. The story, "The Pit Bull of Public Relations" focuses on uber-flak Eric Dezenhall, who specializes in "damage control." He's also a TV pundit and mystery novel writer. According to the article:

....It's difficult to identify what he does for his own clients. Dezenhall won't name them, and he doesn't like to leave fingerprints.

[snip]

[Dezenhall's firm] has been hired by lawyers representing former Enron CEO Jeffrey Skilling and by Mark J. Geragos, the Los Angeles attorney for

Michael Jackson and other celebrities. Pharmaceutical giant Eli Lilly & Co. has retained Dezenhall in the past but won't say why. Journalist Bill Moyers, who tangled with Dezenhall's firm over a 2001 documentary about the chemicals industry, says: "I consider them the Mafia of industry."

And what exactly did Dezenhall do for Skilling? BW saves that until the end of the story:

> Jeffrey Skilling's Los Angeles-based law firm, O'Melveny & Myers, hired Dezenhall in the wake of Enron's collapse in 2001. Internal Dezenhall communications from 2003 show that employees there discussed a plan to pay newspaper opinion writers to publish articles questioning the credibility and motivation of Enron whistleblower Sherron Watkins. It couldn't be determined whether the idea was put into action. O'Melveny partner Daniel Petrocelli, Skilling's lead lawyer in the Enron fraud trial, says that the relationship with Dezenhall has ended. Petrocelli says that if any anti-Watkins campaign took place, Skilling and O'Melveny didn't approve: "That's not something we would ever do."

Without confirming O'Melveny as a client, Dezenhall says: "We aggressively pitch journalists on story ideas, but we do not pay for coverage."

If true, the anti-Watkins campaign would have gotten started after she was named Co-Person of the

Year by Time magazine. Hmmm. Since this trial began, the defense has been making statements, as Ken Lay did last week, that it's time to tell the truth about Enron.

And so as Skilling prepares to take the stand this morning, the question hangs over his testimony: is this the truth, whole truth and nothing but the truth, or the "truth" he paid for?

April 07, 2006

*Weekend reading assignment: Skilling's testimony*

With Jeff Skilling slated to take the witness stand in his own defense starting Monday, we're getting into the meat of the defense's case. Having misled investors about his company's finances, Skilling will now attempt to talk his way out of a jail sentence. It is perhaps fitting that Skilling's defense, and for that matter Ken Lay's, comes down to this: their own words against the evidence assembled against them.

So as we head into the weekend, it's worth reviewing some of what Skilling has already said. Here's a link to his congressional testimony before the House Energy and Commerce Committee.

Skilling's prepared remarks start on page 91, and the questions from committee members begin on page 115. (Skilling's prepared statement can also be found here.)

Skilling is walking a dangerous path. Executives can have a tough time on the witness stand. They're not used to being questioned, to having their decisions scrutinized. Skilling, in particular, has been known to have little patience for dissent.

Unlike Lay, though, Skilling chose to testify before Congress and the Securities and Exchange Commission in the months after Enron's collapse. So starting next week, he has to watch not just what he says on the stand, but what he's already said.

What do you think we're likely to hear next week? More of the same? Dodge and weave or mea culpa? What would you like to hear him say?

Please discuss.

April 06, 2006

*A boost for the nation's airlines*

Well, we're about an hour a way from when court usually wraps up, and the prosecution is only about half an hour into it's cross-examination of Jim Derrick underway. That means Derrick won't be done today.

Everyone who showed up waiting to hear what Jeff Skilling had to say will have to come back on Monday. A lot of national reporters, who flew in for Skilling's testimony, will be flying back home this weekend and coming back Monday.

So while the trial may not have produced at lot of news today, at least its generating some much-needed revenue for airlines.

April 06, 2006

*Hide the pickle, part II*

Harry Truman had a sign on his desk that said "The buck stops here." Ken Lay must have had a sign that said "hot potato, pass it on." Jim Derrick is testifying about how he came to select Vinson & Elkins to conduct the investigation into the Sherron Watkins memo. He essentially dismissed Watkins' concerns about using V&E, Enron's primary outside law firm.

He said he didn't think there was a conflict of interest, even though V&E had done some of the legal work on the Raptor transactions, one of Watkins' primary concerns. Under professional conduct rules, though, it wasn't his call.

"The determination of whether any particular matter is or is not a conflict is to be determined by the firm or the lawyer that is asked to undertake it," Derrick said. In other words, V&E should have determined if it had a conflict, irregardless of its long-standing business relationship with Enron and that fact that some of its own legal opinions would likely come under scrutiny if another firm were hired.

Keep in mind that yesterday, V&E lawyer Max Hendrick played a similar game, passing the buck to Arthur Andersen, who he said vouched for the accounting.

So, Watkins questions the company's financial health and Ken Lay points to V&E. V&E asks Andy Fastow and Rick Causey if they're doing anything illegal and they say no. V&E proclaims there's no need for a more detailed investigation. When Enron collapses, Lay shrugs and again points to V&E, and V&E points to Arthur Andersen. Andersen, the Curly in this little Three Stooges scenario, shoves a bunch of documents in the shredder.

Derrick, by the way, acknowledged that many have second-guessed the decision to hire V&E for the probe. In hindsight, he said, such criticsm is valid.

I'm glad he feels that way, given the column I've written for tomorrow.

April 06, 2006

*Games lawyers play*

I spent the lunch break thinking about the larger-than-usual crowd watching the proceedings today and wondering what it was about Jim Derrick's testimony that defense attorneys wanted to draw attention to.

The defense went to great lengths to telegraph that Jeff Skilling was likely to testify this week, yet it's now clear they have no intention of putting him on the stand today.

Derrick's testimony hasn't exactly been stunning. His answers often are long and serpentine, which is probably in keeping with the defense's delay tactics.

Derrick has shed some light on the kind of person Jeff Skilling is, talking about how the two men shared concerns about the effect that the demands of work had on their families. That supports the assertion that defense attorney Dan Petrocelli made in his opening arguments that Skilling left Enron because of family reasons.

Derrick also portrayed Ken Lay as somebody who was above a lot of the day-to-day minutiae of management, but that's could be said about a lot of chief executives, and their companies don't collapse in one of the greatest corporate frauds in history.

Derrick also discussed the legal benefits of incorporating in Oregon, where the laws apparently absolve executives of responsibility if they listen to the advice of underlings and advisers they believe are competent. But again, that doesn't address the issues of conspiracy and fraud that are alleged in this case.

None of it seems worth rallying the national press horde to the courthouse. Perhaps there's something yet to come, or perhaps the defense simply decided Skilling needed another weekend to prepare for his testimony.

Time management is a key part of any trial, especially one like this. The lawyers involved are top-notch, and everything they do has a purpose. And despite frequent complaints about "trying the case in the press," lawyers spent a lot of time studying media coverage and trying to telegraph messages they want to put out through those of us in the press.

With that in mind, the room's filling up. We're all here, waiting....

April 06, 2006

## *Three for Court TV*

I'm scheduled to make another appearance on Court TV's Catherine Crier Live sometime after 4:30 p.m. Houston time today. Also appearing will be Houston defense attorney Brian Wice and former federal prosecutor Jacob Frankel. We'll discuss the first week of the defense in the Enron trial.

Also, shortly after the show, I'll once again field questions in a live on-line chat session. Feel free to join in.

April 06, 2006

## *Derrick and the No-Doz*

The defense seems content to drag out the testimony of former Enron general counsel Jim Derrick. So far this morning, Derrick has made some minor points about Jeff Skilling's dislike for shareholders and questioned some specifics earlier testimony from broadband executive Kevin Hannon. Hannon, you may recall, recounted a meeting in which Skilling said "they're on to us," in reference to a critical research report about Enron.

The defense has argued that Skilling was being sarcastic.

Derrick, who was in the same meeting, said he didn't recall the remark.

Derrick also waxed fondly about his friendship with Skilling and their discussions of work and family. Derrick even teared up as he mentioned a trip he took with his son to the Grand Canyon shortly before his son's death.

Lay's attorney, Mac Secrest, has taken over the questioning and promised an hour and a half more before turning Derrick over to prosecutors for cross examination. That will be well after lunch, and prosecutors said yesterday they expect about two hours of cross.

After one rambling answer, Derrick prefaced his point by turning to the jury and saying "if you're still awake...."

Here in the media overflow room, a few spectators are dozing off and others who remain awake look bored. The room isn't full, but there's more people than there has been in recent weeks, no doubt in anticipation of Skilling's testimony.

They may be disappointed. The brakes are on. The defense is trying to slow this down, either to push Skilling's testimony to Monday, or to give him a brief window at the end of the day to come up with a zinger for the jury.

April 05, 2006

*Don't count on Skilling tomorrow*

Judge Sim Lake interrupted the protracted direct testimony of former Enron general counsel James Derrick, ending the proceedings early for the day after sustaining several objections to defense attorney Mark Holscher's questions.

"We all get tired late in the day," Lake said, adding that he wasn't criticizing Holscher. "In the morning we'll all be fresher, and perhaps the questions will be briefer."

Defense attorneys said they have another two and a half to three hours of questions for Derrick. Taking into account cross, redirect and recross, we'll be lucky to get to Jeff Skilling's testimony by mid-afternoon. Don't be surprised if the defense tries to drag things out even more to give Skilling another weekend to prepare.

After Skilling, by the way, the defense will produce three character witnesses.

UPDATE: In discussing this possibility with some other reporters, another possibility emerged. The defense may go ahead and start Skilling's testimony late in the day, thereby having the chance to leave a strong image with the jury over the weekend. That's something both sides have done before in this trial.

April 05, 2006

*The government's gift to trial lawyers*

Former Enron general counsel James Derrick is on the stand right now, and it's been pretty dull stuff. But in looking back at my notes on the earlier testimony of Vinson & Elkins lawyer Max Hendrick, I noticed that prosecutor John Hueston brought up the civil lawsuits the firm faces for its role as Enron's law firm.

Hueston noted that anything Hendrick said in court today could potentially be fodder for the civil suits. Earlier, he noted, and got Hendrick to confirm, that V&E received as much as $40 million a year for Enron legal work from 1999 to 2001. Stretching my Aggie math skills to their limit, I calculate that at about $120 million. Somewhere, Bill Lerach is licking his chops.

April 05, 2006

### *A blind eye, a deaf ear, an obvious conclusion*

Prosecutor John Hueston, in cross-examining Vinson & Elkins attorney Max Hendrick, is running through a list of people that Hendrick didn't talk to in conducting an investigation into Sherron Watkins' memo.

V&E didn't talk to:

-- Ben Glisan, the former treasurer who helped create the Raptor transactions.

-- Vince Kaminski, the risk analyst who refused to do any more work on the Raptors. In her memo, Watkins suggested Lay talk to Kaminski.

-- Cliff Baxter, also mentioned in Watkins' memo as complaining "mightily" about the LJM partnership deals.

-- Jeff Skilling.

Hendrick also acknowledged that his investigation showed Fastow made $15 million from the Rhythms Netconnections hedge, but V&E never asked Fastow to confirm that and in fact never asked him about his compensation from the LJM deals at all.

The investigation was sparked by Watkins' memo to Ken Lay, which urged "a good, hard, objective look" at Enron's accounting. That, of course, isn't what happened.

As Hueston pointed out, once Enron decided that there would be no outside law firm and no outside auditor, "the die was cast. There was going to be no second-guessing of accounting."

In summing up the conclusions of his investigation, Hendrick said:

"We stated that no further investigation would be warranted to investigate the facts set forth in Ms. Watkins' memo."

An interesting conclusion given that there was essentially no investigation of the facts up to that point.

By the way, Hueston ended his cross by pointing out that just days later, the Securities and Exchange Commission came to a different conclusion and began its own investigation into Enron's accounting.

April 05, 2006

*A loyal legal lapdog*

The government is trying to discuss some of the concerns about Enron's accounting that were raised in the fall of 2001. The defense has been objecting and Judge Sim Lake has been sustaining the objections.

Even without seeing the memos, the point is clear that a lot of people were worried about Enron's finances, yet V&E seemed oblivious to those worries while it undertook its so-called investigation.

On cross, it's becoming pretty clear that V&E was just being the good legal lapdog to a big-money client. It was only following orders, and those orders were designed to produce certain results. V&E was all too happy to deliver.

April 05, 2006

*Scope on a (short) rope*

Under cross-examination, Vinson & Elkins attorney Max Hendrick acknowledged that he wasn't charged with investigating accounting issues or financial risks facing Enron. Enron knew that because it knew at the outside that V&E was not going to be hiring auditors. In fact, V&E warned Enron that its scope would be limited because of its long-standing relationship with Enron, Hendrick said.

"I think because of the relationship... Vinson & Elkins would not be considered independent for the purposes of doing a full-blown independent investigation," Hendrick said.

In fact, in its business dealings with Enron, V&E worked on some transactions involving the Raptor transactions and reviewed disclosures filed with the Securities and Exchange Commission that included the Raptors, Hendrick acknowledged.

In other words, Enron hired V&E to investigate things it was already involved in. And guess what? The foxes found the hen house was well-guarded.

April 05, 2006

*The paperless investigation*

One of the defense team's favorite themes in the Enron trial has been to harp on the government's lack of documents in presenting the case against Ken Lay and Jeff Skilling.

Now, defense witness Max Hendrick is explaining how his law firm, Vinson & Elkins, could have been so blind to Enron's impending doom. V&E was asked by Ken Lay to investigate concerns about Enron's accounting raised by Sherron Watkins. Except that V&E basically never set out to do much of an investigation. It simply asked people whether there were any problems, and everyone said "no."

No requests for documents were sent out, no records gathered, no accounting reviewed.

For example, when it came to the controversial Raptor transactions, V&E's crack investigative team simply took the word of accounting firm Arthur Andersen and Enron's own executives that everything was legit.

"We were not going to be tearing apart specific transactions...in the Raptors," Hendrick said. "That was a function of timing and manpower." There was never any serious consideration to bringing in outside auditors, for example.

Yet those transactions were at the core of Watkins' concerns. She worried that the Raptors would trigger a cascade of accounting problems that could sink the company. Why would an investigation not dissect them to determine if those concerns had merit?

Well, we know the answer, of course. V&E's conclusion was that everything was fine at Enron, except that publicity about the Raptors and other off-balance-sheet deals could have "bad cosmetics."

"There's going to be questions about why was Enron using its stock to support these vehicles, why was Enron booking gains from transactions with a party that ultimately may not have been a true third party," Hendrick said in summarizing the findings. "That could pose a significant risk of litigation and adverse publicity."

However, that didn't mean the activities were fraudulent, he said. Of course, it didn't mean the transactions weren't fraudulent either. V&E simply didn't bother to explore that issue.

April 05, 2006

*Justifying a whitewash*

Vinson & Elkins lawyer Max Hendrick is on the stand this morning, apparently charged with impeaching the testimony of Sherron Watkins. Hendrick oversaw the window-dressing investigation into Watkins' now-famous memo warning of "an implosion of accounting scandals."

Hendrick questioned Watkins' claims that V&E lawyers were worried about the events at Enron. Hendrick characterized his meeting with Watkins as a simple difference of opinion: that Watkins thought Enron should restate its financials because of the Raptor transactions, instead of simply booking a loss from them in the third-quarter of 2001.

He also portrayed Watkins not as a whistleblower, but as simply an office gossip:

"We understood that some of her information came from office gossip or what she had been told related to the Raptor loss for the third quarter . . . Her perception of why Mr. Skilling left the company [was] pretty much office gossip."

It ignores one pertinent point: Watkins was right.

In her meeting with Hendrick, she had also raised the issue that Andrew Fastow's LJM partnerships got an upfront fee on the deals it did with Enron. Hendrick determined that in fact it was a put option that Enron had taken on his own stock. In other words, that Enron was betting its own stock would fall in order to pay LJM.

He found nothing questionable about that because Arthur Andersen accountants told him it was OK, that from an accounting stand point, the deal could still be justified. Hendrick's doing a little soft-shoe number on the witness stand, pointing to Andersen as the one who approved the Raptor deals. In other words, if Andersen said it, then it's all on them. V&E wasn't going to question the accounting or the underlying assumptions behind it. This is basically the same tactic Hendrick used in his investigation. Andersen's methods were never probed.

Keep in mind that while he was working so diligently to get to the bottom of things, Hendrick's firm was getting about 7 percent of its annual revenue from Enron, as detailed in this Forbes magazine article. Andersen, of course, was also feeding heartily at the Enron trough, to the tune of more than $50 million a year.

That's the reason Watkins specifically didn't want V&E to investigate the claims. While Hendrick's team talked to about 11 people, he never talked to Ken Lay or Jeff Skilling, which would seem to be a basic step in any such investigation.

But the V&E inquiry was a dance. It wasn't meant to find the truth, it was meant to rationalize Enron's actions. While Lay was busily trying to sweep away Enron's financial problems, V&E lifted the rug for him. If Hendrick had been more aggressive in his work, or for that matter if Lay had shown a real interest in getting to the bottom of Watkins' concerns, tougher questions would have been asked. If they had been, things might have turned out differently.

It was, quite simply, shoddy legal work by one of Texas' most prestigious firms, and one that Enron's bankruptcy examiner has said might even constitute legal malpractice.

April 04, 2006

*Skilling is two witnesses away*

Defense lawyer Dan Petrocelli says his team has two witnesses ahead of Jeff Skilling. Those witnesses -- former Enron general counsel John Derrick and Max Hendrick, the Vinson & Elkins lawyer who led the investigation of Sherron Watkins' memo -- will take all day tomorrow. Skilling will take the stand first thing on Thursday, as predicted, and will be testifying for "a number of days," Petrocelli said.

After another day of this defense, it's clear that testimony from Skilling and co-defendant Ken Lay is paramount. Through its 22 witnesses, the prosecution told a story of what happened at Enron. The defense has responded with very narrow effects to pick at that story. The only way the defense can tell "the true story of Enron," as Lay likes to say, is to get the defendants in front of the jury. Then defense lawyers can use the lesser witnesses to bolster its closing arguments.

But as it stands now, it seems the fate of the defendants are in their own hands, or words, as the case may be.

April 04, 2006

*....And a sale for every season, until bankruptcy*

Things have definitely picked up now that two lawyers are squaring off in the Enron trial.

Prosecutor Sean Berkowitz is questioning Mark Metts about a deal known as Project Summer, in which Enron planned to sell some troubled assets to a sheik from the United Arab Emirates. Berkowitz started to ask a question about the sheik, then stopped himself and asked about the proper pronounciation of the word.

"You say SHEEK, I say SHAKE. I don't know," Metts said with a chuckle.

Project Summer, which was put together in 2001, never happened. It gave way to what Berkowitz called Project Summer Light. "Project Indian Summer," Metts corrected.

Andrew Fastow previously referred to something called Project Fall, though it's unclear if Indian Summer and Fall are the same thing. At this point, another reporter asked if there was ever a Project Winter.

I think that would have been the bankruptcy filing, which did manage to ultimately sell all these troubled assets.

April 04, 2006

*Meet your new boss...*

Prosecutor Sean Berkowitz is attacking the credibility of defense witness Mark Metts, noting that Metts was demoted soon after he had a telephone shouting match with former Chief Financial Officer Andrew Fastow.

Metts acknowledged the demotion came about a month after the phone call. As a result of the demotion, Metts wound up reporting to Fastow.

Berkowitz also pointed out that Metts is a defendant in civil litigation related to Enron and stock that he sold. Metts' civil lawyer was in court today listening to his testimony.

"You realize that anything you say here could be used against you in civil proceedings," Berkowitz said.

UPDATE: Metts, by the way, acknowledged on cross examination that he didn't want Fastow's LJM partnership bidding on Enron's wind assets because he didn't think they operated independently from Enron.

With that comment, Metts may have done more to bolster the prosecution's case than he did to help the defense.

April 04, 2006

*Angry Andy and the sale of wind*

Mark Metts is recounting Andrew Fastow's displeasure with the handling of Enron's sale of its wind turbine assets in April 2001. Fastow, Metts said, was angry that the LJM partnerships, which Fastow ran on the side, wasn't being given the inside track on the bidding.

Metts, who made it clear he doesn't like Fastow, said he wanted LJM treated like any other bidder. Fastow called and "screamed" at him at one point, threatening to take the whole matter to Jeff Skilling.

"I basically had to repeat that several times in response to the several nasty things he said," Metts said. Ultimately, the matter did go to Skilling. "Jeff agreed with me that the only way that LJM could participate in the wind process was if LJM played by the same rules as everybody else."

Metts said Skilling several times assured him that LJM wouldn't get preferential treatment. In fact, Metts said Skilling seemed to get frustrated with Fastow's attempts to squeeze into the deal.

"We were all frustrated," Metts said.

At first blush, that sounds pretty damaging. It would imply that Skilling tried to treat LJM as a truly independent entity. Keep in mind, though, that this was April 2001. By that time, Skilling had already told Fastow that the disclosure issues surrounding LJM were becoming a problem, and they were already working on the plan under which

Fastow would sell his interest in LJM to Michael Kopper.

Skilling didn't seem to have the same concerns a year earlier when he endorsed a plan to bet against Enron's own stock.

April 04, 2006

*Or he might stay in bed and pull the sheets over his head*

During a break in the court "action" this afternoon, Ken Lay spoke briefly with the Chronicle's Mary Flood about the health of his lead lawyer Mike Ramsey.

"I figure Mike will be back in time to take credit for the verdict," Lay quipped.

Ramsey may want to see how his client does on the stand first before he shows up in court again.

In the meantime, we're slogging through testimony about wind farms by Mark Metts, Enron's former head of corporate development. Defense attorneys have promised only 20 minutes more of Metts, but it looks like we're three witnesses away from Skilling, so don't be surprised if they try to drag things out.

They'd rather have Skilling start out on Thursday morning. It fits better with the TV news cycle.

April 03, 2006

*Is the defense in trouble?*

OK, I'm not a lawyer. Any given member of the defense team for Ken Lay and Jeff Skilling probably spends more on cologne than I make in a year.

But in watching the past few hours of defense testimony, it's becoming clear just how much trouble the defendants are in. It seems to me that Lay and Skilling, long before now, should have asked of each witness "how is this person going to keep me out of the clink?" Little has come out of today's testimony that seems to address that point.

It's still early, of course. Maybe the defense will pick up. Maybe Lay and Skilling themselves will give such moving and dramatic testimony that it won't matter, but as my mom used to say, this is April, and the may-bees aren't flying yet.

April 03, 2006

*The keeper of the Kool-Aid*

Sarah Davis is talking about the training she helped put on for new employees. With great perkiness, Davis is explaining how she welcomed new employees to the company, a job she loved because she was so proud of Enron.

She's going on about mentoring programs and how new hires attended presentations were they ate lunch with others who lived in the same part of town. She also talked about the "executive shadow" program, in which newbies followed executives around.

It appears -- though her testimony is so rambling it's hard to tell -- that Davis is on the stand to explain the difference between a layoff and redeployment with in the company. I can help with this: at Enron, a layoff meant you were out on the street. That was bad, because it might spook the market and send Enron's stock price down. A redeployment meant you got shuffled to some other division -- broadband, for example -- where you were given important tasks like converting oxygen to carbon dioxide and helped maintain the illusion that Enron was a healthy growing company.

April 03, 2006

*Ready, set zzzzzzzzzzzz*

Rather than starting with a bang, the defense of Ken Lay and Jeff Skilling has started with a low prolonged groan. Oh, wait, maybe that was the sound of my own snoring...

So far, we've been through four defense witnesses, most of whom are picking away at individual testimony of prosecution witnesses. We're wrapping up a two-hour discussion of risk assessment by Rogers Herndon, who assessed the risk of transferring Enron Energy Services into the company's wholesale division. Here's a sample:

"Volumetric risk is volumetric risk." That's what Herndon said on cross. During direct, defense attorneys had to repeatedly ask him to define geeky jargon. All of this on the day after the time change. Consciousness is in short supply in the fourth-floor overflow room.

The EES transaction, by the way, is what prosecutors claim Skilling used to hide some $200 million in losses. On cross-examination, Herndon acknowledged that he couldn't say whether the move generated any profit for Enron.

Prosecutors are taking the same approach they used with the other defense witnesses: trying to show that they were low-level employees who weren't privy to meetings with Skilling or Lay and who knew little of the higher-level concerns voiced by many of the prosecution's witnesses. In Herdon's case, for example, he testified he wasn't aware of the larger financial concerns facing Enron in 2001.

Unlike the prosecution, which presented its case as more of a story, the defense is approaching its side of the case more like a guerrilla war, attacking a key point, then moving on to something else.

That may change when Skilling himself takes the stand, which could happen later this week. If today is any indication, it's becoming increasingly clear that the defendants' personal testimony may be their best hope for acquittal.

In the meantime, I wonder if Starbucks would brew me up a Super Grande-Venti Sumatra....

April 03, 2006

*Podcast news*

On Friday, I participated in a Enron trial podcast hosted by the Chron's Mary Flood. (That's right, the very same Mary Flood of Ask Mary fame.) The other guests were attorneys Stanley Schneider and Michael Wynne, both of whom contribute to the Chron's Legal Commentary blog. There was lots of insightful comments, and I said a few things too.

For more information on how to listen to the podcast, check out this post by online editor Dean Betz over at our Enron: TrialWatch blog.

# APPENDIX BV

THE HOUSTON CHRONICLE
A Business Web Log
by Loren Steffy
May 2006

May 30, 2006

*Is the Kinder Morgan buyout good for investors?*

That's the overriding question as we begin sifting through the $13.5 billion management-led buyout announced yesterday. Forget about how big it is. In these situations, size only matters to investment bankers, who measure their worth by the size of their deals.

And yes, it's ironic that Rich Kinder makes headlines just days after his former Enron colleague, Ken Lay, made even bigger ones by getting convicted. But that, too, is merely an interesting footnote to the deal itself.

Some analysts who track Kinder Morgan have been saying for several years that higher energy prices would work against the innovative interlocking partnership structure that Kinder Morgan set up. If that's true, that may explain the recent decline in the stock price more than the Canadian investments that the company cited.

I'll have more perspective on the Kinder Morgan deal in my column tomorrow. In the meantime, since so many of you who read and comment on this blog know the energy industry, what do you think? Does this deal make sense? Who wins and who loses?

May 30, 2006

*SEC pats itself on the back*

I still have a little mopping up to be done from last week's Enron verdict. Here's a memo that SEC chairman Christopher Cox sent to his staff on Friday. (Thanks to footnoted.org).

From: Chairman Christopher Cox

Sent: Friday, May 26, 2006 8:35 AM

Subject: Congratulations

Yesterday's guilty verdicts in Houston mark a milestone for our country, and certainly for this agency. You should be proud to be a member of a team that has successfully brought enforcement actions that have obtained more than $400 million so far to benefit Enron's victims. The criminal trial was a success in no small part due to the tremendous assistance to the Enron Task Force provided by our staff. Together, our agency efforts were responsible for uncovering extensive information during the SEC's independent investigation. The prosecutors used that information to build their case and ultimately to examine witnesses and present

> evidence during the course of the trial. Our SEC team also shared valuable information from our independent investigation regarding fact and expert witnesses, and provided strategic advice and analysis. As you know, during the trial, we were able to provide on-site consultation about details of the case. This criminal verdict is but one of many results we can see everywhere around us, throughout the country, where you and our colleagues throughout the agency are truly making a difference. Investors today are better protected for the example our agency has helped to set. Congratulations, and thank you. Chris

The SEC deserves to take a bow for the Enron case, much of which was predicated on its initial investigation. Cox, of course, wasn't chairman back then. Given the recent attitude towards the enforcement division among SEC commissioners, it's unclear how far the Enron investigation would have gotten under the Cox regime.

Meanwhile, short seller Jim Chanos, who was one of the first to spot the problems with Enron's accounting, weighs in with this op-ed piece in today's Wall Street Journal. You may recall I talked with Chanos early on in the trial about short-sellers' role in Enron's demise.

May 25, 2006

*Enron retiree says he's a "happy man"*

I'm waiting for an appearance on Court TV's Catherine Crier Live at about 4:30 Houston time, and in the waiting room for another show is none other than Charles Prestwood, the oft-interviewed Enron retiree.

"I'm a happy man," Prestwood told me. "I've waited five years for this day."

That probably sums up the feeling of a lot of former Enron employees.

By the way, after my Crier appearance, I'll once again host a live chat session on Court TV's Web site.

May 25, 2006

*Lay posts bond*

Ken Lay posted a $5 million bond secured by properties owned by him and his children and has surrendered his passport. Judge Sim Lake ran through a pretty standard list of restrictions for Lay's release pending sentencing.

He can't travel outside the southern judicial district of Texas or Colorado, and must avoid any contact with alleged victims or witnesses of the case.

"You shall not intimidate or attempt to intimidate a witness, juror or officer of the court." Oops. Too late.

Lay signed the agreement -- no, he didn't use the Autopen -- and then his wife and three children came up to the bench and signed the bond agreement, backed by quit claim deeds on their property.

May 25, 2006

*Plea agreements not an issue, jurors say*

One of the overriding issues for the defense was the government's use of plea agreements. Seven prosecution witnesses had deals with the government. Defense attorneys argued that the testimony was coerced. Skilling's lawyer, Dan Petrocelli, went so far as to say that fear was on trial.

Jurors, however, said the argument didn't hold up. Donald Martin said the witnesses all came from different parts of the company with different perspectives, "but they all came to the same conclusions" about how Enron operated.

"It was not hard to accept their credibility," Martin said. As for Andrew Fastow, one of the most controversial prosecution witnesses, "Fastow was Fastow," Martin said with a chuckle.

When they questioned a witness's credibility, they found corroboration in documents, several jurors said.

As for the defendants themselves, Wendy Vaughan, a roofing contractor, said that Lay's combative demeanor was telling.

"He seemed very much wanting to be in control," she said. "He seemed very much to have a chip on his shoulder. It made me question his character."

Vaughan said that she began the trial admiring both Lay and Skilling, and that she believes they deserve credit for their accomplishments. But after weighing the evidence, she believes that they lost sight of their responsibility.

“It was sad to see...that they had to hurt so many people.”

Amanda Perry, an alternate, said if she could ask the defendants one question, it would be why they did it. She said both men clearly loved Enron, and she doesn’t understand why they would have betrayed the company, its employees and investors.

May 25, 2006

*The jury speaks*

I just got back from a lengthy press conference with members of the jury. Juror Carolyn Kuchera offered some of the most interesting insight into the verdict. Several of her fellow panel members talked about how difficult it was to serve on a panel for so long, about the sacrifices they made with both work and family to reach their decision.

Kuchera noted that Lay and Skilling didn’t seem to share that sense of responsibility.

Those of us who have full-time jobs did our jobs at night when we got home exhausted. And on weekends. Some of us went to work straight from court. We were responsible. We were accountable. I think these [Enron] employees were entitled to the same thing.

Juror Kathy Harrison said:

Those in charge have a responsibility. There's too many losers [in this case.] Too much hurt.

Freddy Delgado, a school principal, said he saw similarities between Lay and Skilling's obligations and his own.

"I'm still responsible for what goes on my school," Delgado said. "If a child gets lost, I'm still responsible." He noted he had calls from parents even while he was at the courthouse.

Lay's stock sales to the company also were a factor in reaching a decision, Delgado said. "That was a real indicator of his character, that he cashed out before the employees."

Lay, by the way, has not been allowed to leave the courthouse. The judge has scheduled a 2 p.m. hearing, presumably to handle the issues of his bond.

May 25, 2006

*A little color from the verdict*

Just a quick post to fill in a little color from the verdict. The camera image is a little blurry, but it didn't look as if Skilling showed much emotion. Lay wanted his wife, Linda, to sit beside him at the defense table, but the judge refused, so Lay sat in the first row of the spectator seating, holding his wife's hand.

The jury is about to give a press conference, but as we were waiting, one observer asked me to sign her verdict sheet. I'll post on that in a little bit. Stay tuned. Sorry if all this seems a little disjointed. Welcome to the chaos of major breaking news. I'll try to put it all in perspective this afternoon.

May 25, 2006

*GUILTY -- Not surprising, and yet...*

I'd like to say that I'm not surprised by the jury's decision in the biggest business trial ever -- guilty on all counts for Ken Lay, guilty on 19 counts for Jeff Skilling. Having covered Enron since the fall of 2001, I knew the facts of the case. Still, I was surprised that the jury made its decision so quickly, even if I'm not surprised by what they found.

Many of you have been asking about sentencing. Judge Sim Lake just said he would sentence the defendants the week of Sept. 11.

Lake denied the government's motion for home confinement pending sentencing. Skilling already has posted a $5 million bond.

Lay must surrender his passport today, and "I think we need a substantial cash bond." Lake said he wouldn't allow Lay to leave the building today if he didn't give up his passport. Lay's kids will put up a $5 million bond, his attorney, Mike Ramsey said.

May 25, 2006

*Whither Dell? Do tell*

What's Dell to do? That's a question that frequent commenter Forest wanted to delve into in response to this column I wrote last Sunday. I'd held off writing a "Dell is done"-type column for a while because Dell had always been able to correct its mistakes in the past. It's one of the things I'd admired about the company.

Now, though, Dell seems trapped by its own success. It clings to the model that worked so well in the past, but may not be working so well anymore. As Dwight Silverman pointed out the other day, its managers are starting to sound more like Compaq in the Eckhard Pfeiffer era. They insist they're right, that the old ways will still work, but their performance shows otherwise. Dwight's made this point before, by the way.

By the way, I also got an email earlier in the week from an investment adviser who criticized the column. Dell insiders have been buying stock he argued. Actually, they'd exercised options late last year and have been holding them. He said he'd "rather invest with the centillionaires than the wrestling coaches" and argued that Dell was a compelling value.

Well, the wrestling coach followed the same strategy for years and made lots of money. He got out because "investing with the centillionaires" stopped working. Which was the point of the whole column.

So what is Dell to do? As I noted in my column, it doesn't seem even Dell's leaders have the answer. There was the XPS push last year, the purchase of Alienware, the addition of AMD chips, and now, this strange hybrid of retail stores with direct-sales inventory. All of these seem like tweaks. They may be good moves, but they aren't the broad change investors seem to want. So what's needed?

May 24, 2006

*Odds closed on Lay-Skilling verdict wagers*

BetCRIS Sportsbook, one of the online wagering sites tracking the verdict in the Lay-Skilling trial says it's not taking any more bets.

"This is possibly the biggest trial in business history," BetCRIS chief executive Mickey Richardson, said in a statement. "Our clients were rushing to place their bets -- and they were only putting their money down on 'guilty'. Given how the trial progressed, the odds became so outrageous that bettors who wanted to wager on Lay and Skilling's conviction became upset when they were quoted such a high price. At those numbers we thought it was best to close the odds."

BetCRIS said it closed the betting at the following odds:

Will Kenneth Lay be convicted?

Yes 1 to 80

No 1.4 to 1

Will Jeff Skilling be convicted?

Yes 1 to 100

No 1.5 to 1

On Monday, I posted this update on wagering at Tradesports.com, a online gambling site in Ireland, which is also taking bets on the verdict. As I noted earlier, this is big change from the odds at the outset of the trial.

May 24, 2006

*Chron columnist first confirmed case of 'trial brain'*

The symptoms have been building for months: forgotten appointments, unanswered email, inadvertently referring to the federal courthouse as "home." But today, I exhibited symptoms of "trial brain" that I can no longer ignore.

Several months ago, I agreed to speak to a local Rotary Club at lunchtime today, with the understanding that the Enron trial might interfere. I told the Rotarians that if the case was still going on, I'd have to do it another time. Last week, the club contacted me and said they'd find a different speaker given that the jury was still likely to be deliberating.

Meanwhile, my trial-addled noggin completely blanked out the message. I discussed with my editor what would happen if the verdict came down while I was giving the speech. I even joked to fellow reporters that the verdict probably would come down today while I was speaking.

So what do I do? You guessed it. I showed up at the speech. Boy, was everyone surprised! Especially the real speaker. The Rotarians were very nice about the whole thing, apologizing and evening feigning concern that it might have, somehow, been their fault. We'll reschedule, they said. But in their eyes, I could see what they were thinking: "trial brain."

The only known cure, of course, is a verdict. That produces a burst of frenetic activity, followed by exhaustion, which resets the synapses. In the meantime, I'm determined to try to lead a normal life despite my condition. That's not to say it isn't embarrassing, though. I was shaking my head the whole way "home."

May 24, 2006

*'Bernakiromo' is splitsville*

Federal Reserve Chairman Ben Bernanke assured congressional leaders that he won't be running monetary policy via weekend dinner parties anymore. In this Associated Press story, he called his tableside conversation with CNBC's Maria Bartiromo a "lapse in judgment."

"In the future my communications with the public and with the market will be entirely through regular and formal channels," he told Sen. Jim Bunning, R-Ky., who opposed Bernanke's appointment as Fed chairman.

Fortunately for the markets, it appears the whole affair was just a financial fling.

As the story noted:

Bernanke took over the Fed job on Feb. 1. In a congressional appearance on April 27, he had raised the possibility of the Fed pausing its two-year, credit-tightening campaign. Stocks rallied that day.

But on May 1, CNBC reported that Bernanke had told a CNBC reporter that investors had misinterpreted his recent congressional remarks as an indication the Fed was nearly done raising rates. Stocks, which had been up for most of the day, slumped.

Besides raising questions about his communications skills, the incident underscored the fact that a single word uttered by a Fed chief can move stock and bond prices.

Oh, and what about rate hikes?

In terms of the Fed's next rate decision in late June, though, Bernanke said the Fed will rely heavily on what incoming barometers say about inflation and economic activity.

He's learning. That's a non-answer that would make Alan Greenspan proud.

May 23, 2006

*27 badges of fraud*

In response to defense attorney Mac Secrest's comments about the "badges of fraud" in this case, prosecutor Sean Berkowitz pointed to the 27 loan documents that Lay filled out, most of which restricted the proceeds from being used to buy stock on margin.

"Those are the badges are fraud," Berkowitz said. Each time Lay filled out a document and sent it to bank, it was a lie, he said.

Berkowitz said Lay lied on the loan documents to increase his financial flexibility. By saying he wasn't buying stock with the loans, the banks required less collateral.

"He knew that if he told the banks that he was going to use that money to buy stock, it would cost him," Berkowitz said. "Mr. Lay did this for the worst possible reason: because he thought he could get away with it."

The bank forms that relate to Regulation U are straightforward, a "form my 7-year-old nephew could understand."

"Unfortunately, Mr. Lay seems constitutionally incapable of accepting responsibility for what he did here," Berkowitz said. "He got caught with his hand in the cookie jar." Lay can't deny that, the prosecutor contended, so instead he tried a series of excuses such as "it's not my hand," or "there were two cookie jars" or "I put the cookies back."

The bottom line, Berkowitz argued, is that Lay told the banks he would use the money for one thing, and used it for another. Under the way the statutes are written, that is fraud, he said.

With that, the closing arguments concluded. Judge Sim Lake said he will make his ruling in the case after the jury verdict in the Enron trial. Speaking of which, the jury in that case is leaving at 3:30 today, having worked through lunch, Lake said.

May 23, 2006

*A violation, but not a fraud*

Defense attorney Mac Secrest, in his closing argument, says Ken Lay violated the banking rule known as Regulation U, but he had no intent to commit fraud.

"We had no intent to deceive," Secrest said. "We had no intent to defraud." Secrest noted that all the money in question was repaid long before the Enron Task Force "came looking for something to add on to the indictment."

Lay, Secrest argued, simply didn't pay that much attention to details like loan documents. "He wasn't paying close attention," Secrest said. "He relied on other folks to help out. Their fault? Absolutely not." The banks, too, must have been aware that Lay wasn't using his loans properly. They had an obligation to intervene if they thought their collateral was in danger, but they didn't, Secrest said.

Secrest argued that if there were evidence Lay were "running a scam," then a bank fraud charge might be warranted. But instead "we have run afoul of a regulatory violation."

While Lay acknowledges that he violated Reg U, Secrest argued that he didn't do it to deceive the banks.

"There's no badges of fraud," Secrest said. "Where are the duped documents? Where are the shredded or destroyed documents? Mr. Lay's staff was never asked to violate the law. He didn't commit bank fraud and he didn't make false statements."

May 23, 2006

*'Reg U was in Mr. Lay's way'*

In making closing arguments in the bank fraud trial of Ken Lay, prosecutor Robb Adkins said Lay knew the terms of the loan agreements he was signing. Lay repeatedly signed the forms year after year, or instructed his subordinates to do so. Adkins showed that Lay had two types of loans, ones that could be used to buy stock and ones that couldn't.

Even though he knew some of the loans shouldn't be used to buy stock, Lay did so anyway, Adkins contends. Using those loans to buy stock was a violation of a Depression-area banking rule known as Regulation U.

"It was clear from his conduct that these rules were not important to him, but they were important to the banks," Adkins said. "Reg U was in Mr. Lay's way, so he cut corners. What he was doing was lying to the banks on the forms."

May 23, 2006

*Out of pocket, out of compliance*

Under cross-examination, Ken Lay repeated his assertion that he didn't understand the legal parameters detailed in loan documents that he signed. He is now on trial before Judge Sim Lake for violation those rules, known as Regulation U.

"I'm not denying that we weren't in compliance," Lay said. "I just didn't fully understand it, and I'm not sure my staff did either."

Prosecutor John Hueston argued that when one bank wouldn't allow him to borrow as much money to buy stock on margin, Lay went to another bank. Hueston reviewed testimony from a bank officer who said he had a discussion with Lay about using the loan to buy stock.

"Regulation U was not something I carried around in my hip pocket," Lay said. "I'm sorry I didn't know more about it. But I had a lot going on in my life back then. I doubt I read in detail any of these loan documents."

May 23, 2006

*Ken Lay travelogue*

Ken Lay recounted weeks-long trips that he frequently took in 1999 and 2000. He went to Paris, then on to Davos, then India, for example. This was "typical" of what his life was like in the salad days of Enron.

And during all this globe-trotting, no one ever sent him loan documents to sign. See, he was just too busy, and doing too much traveling to be concerned with the mundane details of loan agreements. So he had the Autopen sign them in his absence.

Lay again said he had no intention of defrauding the banks who loaned him money. Of course, the bank fraud charges he faces doesn't have an intent component. Intent, in this case doesn't matter.

Lay's attorneys have passed him over to prosecutor John Hueston for cross-examination.

May 22, 2006

*Maybe he meant 'Otto' Pen . . .*

Ken Lay's testimony in his bank fraud case will continue tomorrow morning, and his attorneys have promised more discussion of the Autopen. As Lay noted earlier, the Autopen story has taken on a life of its own. Which leads me to wonder, are we talking about a machine like this, or perhaps something a little more sentient. . .

May 22, 2006

*Lay back on the stand*

Ken Lay has returned to the witness stand, this time to defend himself on bank fraud charges. Lay doesn't deny that he failed to follow provisions of loan documents that prohibited him from using bank loans to buy stock on margin.

"There's no doubt that we did not fully comply with the provisions of those documents," Lay said. He doesn't dispute that he bought stock on margin with the loan proceeds, which violates a Depression-era law known as Regulation U.

Lay said he never intended to defraud banks or intentionally make false statements. Lay said no bank officers ever warned him that he was in violation of Reg U and that he didn't even know his loans were an issue until the morning of his indictment on Enron-related charges.

Lay said had he known that his loans weren't in compliance, he would have done what he could to fix the problem.

He didn't need the money, after all. He was running a virtual ATM out of Enron, after all, drawing down lines of credit and repaying it with Enron stock.

Carroll, by the way, continued his efforts to exonerate the Autopen: "Was there some sort of robotic Autopen out there running amok signing your name to things?"

"Quite the contrary," Lay said. "I was a little upset that as much was made out of that Autopen as well."

May 22, 2006

*The Autopen's not evil, just misunderstood*

I decided to drop by Ken Lay's bank fraud trial this afternoon, and what should come up but the issue of the evil Autopen. Lay's attorney, Ken Carroll moved for the charges to be dismissed because the government didn't make its case. And he noted that the defense didn't mean to besmirch the Autopen or imply that it ran amok.

"We're not saying some Autopen was going crazy out there," Carroll said. Instead, he argued that no one explained the full details of the loan documents to Lay before he ordered them signed by the Autopen.

"We're not saying someone was sneaking in to use the Autopen at night, but there's been no evidence that someone read him that document," Carroll continued. So, Lay's intent wasn't to defraud, he argued.

See, it wasn't the Autopen's fault. He was just following orders. And of course it wasn't Lay's fault. He didn't understand what he was signing. You know, these documents are very complicated, and a chief executive can easily get confused.

Judge Sim Lake, by the way, denied the motion. But at least the Autopen's good name was cleared.

May 22, 2006

*The odds couple*

While the jury continues to deliberate the fates of Ken Lay and Jeff Skilling, the odds may be going against them. At least that's what some futures traders think. Contracts traded at the Tradesports.com show Lay and Skilling are at least 70 percent likely to be convicted on some of the charges they face. The site predicts Skilling will get nailed on at least 16 of the 28 charges against him and Lay will be convicted on at least four of the six he faces.

That's a pretty dramatic turnaround from the beginning of the trial, when the odds for conviction were running more like 50-to-1 against.

By the way, it doesn't appear there's a line on the separate trial on bank fraud charges against Lay that's currently underway.

May 22, 2006

*The rerun of the king*

Yesterday's New York Times had this little snippet noting that the closing argument of Ken Lay's lawyer, Mike Ramsey, was strangely reminiscent of Aragorn's speech to the armies of men before the attack on the Black Gate of Mordor in the third Lord of the Rings movie.

Sound familiar?

At least the Times got Ramsey to source his material:

Mr. Ramsey said on Thursday that "Rings" might have provided the inspiration. "I steal liberally from quotations from everywhere," he said.

By the way, the Times calls the character "Aragorn of Arathorn," which, of course, isn't right. He was Aragorn, son of Arathorn, heir to the throne of Gondor.

OK, I know, I know. I'm being cantankerous.

May 19, 2006

*The end of the free for all?*

Southwest Airlines may put the kibosh on its carnival seating. According to this Associated Press story, the airline's new computer reservation system will have the ability to assign seats and book international flights. (Hat tip to Matt B.)

The seating free for all is one of the more endearing quirks of Southwest's business model. People either love it or hate it. Some liken it to loading a cattle car. Others consider it a reward system for early birds.

It can be frustrating to be the last one on the plane and get stuck in the middle seat in the back row between two Sumo wrestlers. Frequent fliers, though, know how to game the system. They know how to get in the first boarding group and how to jockey for overhead bin space. In my wire service days, it seemed I was always hopping a Southwest flight at the last minute, so I learned a few tricks to surviving Group C.

For example, even if you're one of the last people on the plane, you can still wrangle an aisle seat. You look for two people who are sitting in an aisle and window seat, talking across the empty middle. You say, "excuse me, I'll just squeeze in there." Nine times out of 10, the aisle guy moves over.

So, in a way, it would be sad to see the free for fall fade away. It was one of the things that made Southwest unique. And yet, I had a sense in recent years, as load factors grew, that it was undermining the airline's efficiency.

Southwest's turnaround time, a key part of its cost model, has been rising, and part of that is because it takes longer to load planes in which every seat is full and passengers are crawling over each other to get to their seats. The dual-boarding system, which Southwest tested for years, hasn't worked.

So maybe it's time. Southwest, by the way, has argued that its system of boarding using three groups and letting passengers fight for seats is still faster than boarding by rows, even if the planes are full. SciGuy had an interesting post that seems to support that notion back in December.

As for the international stuff, I wouldn't read too much into it. After all, you can now book a flight to Hawaii on Southwest via its code-share agreement with ATA. It makes sense if the company's spending

$5 million to improve its res system that it would include the ability for international code-sharing.

So what do all you Southwest fliers out there think? Is it time for assigned seating? And feel free to share your own Group C survival tips.

May 18, 2006

*Ken Lay-tu barada nikto*

I'm not in court for the first day of Ken Lay's bench trial on bank fraud charges, but in reading our Enron:Trial Watch blog, I almost wish I was. Lay's lawyers are implying that an Autopen may be to blame for signing loan documents.

Lawyers for Ken Lay tried to raise the possiblity that a machine used to reproduce autographs signed Lay's signature to loans with Bank of America that are being scrutinized in his bank fraud trial.

[snip]

The Autopen machine is used by celebrities, politicians and others who are frequently required to sign documents.

So, Mr. Responsibility, who blames short-sellers, journalists and Andy Fastow for the collapse of the company he ran, now blames an evil robot for signing loan documents without his knowledge.

Call it the Gort defense. Like the silver robot from The Day the Earth Stood Still, there was no stopping the evil Autopen. Lay forgot to say "Klaatu barada nikto."

May 17, 2006

*Media merry-go-round*

I guess today's my day to make the rounds on cable. Now that the jury has the case in the Enron trial, everyone seems to want to talk about it. Earlier, I taped an interview with the Fox News Channel, which they said would run throughout the day. At 3 p.m., Houston time, I'm scheduled to appear once again on ' Dan Abrams' show on MSNBC. And between 4:30 p.m. and 5 p.m., I'll be on Court TV's Catherine Crier Live, after which I will once again host a live chat session on Court TV's Beb site. Feel free to weigh in with your questions.

May 17, 2006

*'You can't buy justice'*

Prosecutor Sean Berkowitz ended his closing arguments by once again boiling the case down to a theme laid out in the government's opening argument:

"This is a simple case. Black and white, truth and lies. The shareholders buy a share of stock... They're not entitled to much, but they're entitled to the truth. They're entitled to be told what the financial health of the company is. They're entitled to honesty. They're not entitled to be told 'you just wouldn't understand.'"

Addressing the jury, Berkowitz concluded by saying "The final word goes to you. The final word goes to people like the investors." He then listed the occupations of every member of the jury. In reference to the defendants, he told them, "you get to decide whether they told the truth or whether they told lies."

I submit, ladies and gentlemen, that when you consider all the evidence, you will conclude that these men lied. I'm asking you to send them a message that it's not all right. You can't buy justice. You have to earn it.

With that, Judge Sim Lake turned the case over to the jury. Now, the waiting begins...

May 17, 2006

*Raptors come home to roost*

In October 2001, Enron reported a $1.2 billion writedown in shareholder equity related to the Raptor transactions. The company didn't want to call it a loss because that would require Enron to restate earnings, prosecutor Sean Berkowitz said.

"They decided to try to bury the disclosure, " he said. "They tried to mislead the market. "

Lay also characterized losses in the third quarter of 2001 as nonrecurring, which he knew the market would largely ignore, even though the losses were, in fact, recurring, meaning they came from Enron's operations. Enron's accounting firm, Arthur Andersen, even argued that the losses should be recurring, Berkowitz said.

"The public was entitled to know," Berkowitz said. "The charges with the Raptors had come home to roost and the public didn't know about them."

May 17, 2006

*'No other shoe to drop indeed'*

Prosecutor Sean Berkowitz characterized Enron as "a fundamentally risky company, and the market didn't know about it. Mr. Skilling chose to perpetuate the lie," he added.

Berkowitz then examined Ken Lay's motivation, noting how Lay borrowed $100 million to fund his lifestyle and used Enron stock as collateral.

"He mortgaged his financial future," Berkowitz said. Every time Enron's stock price fell, Lay felt more financial pressure.

"He lied to keep that stock price up, to get to the next quarter, to the next year, because he thought they could get out of it," Berkowitz said.

Lay didn't bother to investigate Sherron Watkins' memo, and didn't want a thorough inquiry into her allegations for a simple reason, Berkowitz said:

Mr. Lay's finances couldn't take any bad news, his reputation couldn't take it, and Enron couldn't take it. No other shoe to drop indeed.

May 17, 2006

*Perpetual motion revisited*

Prosecutor Sean Berkowitz told jurors why Jeff Skilling and Ken Lay perpetuated the allegedly conspiracy at Enron. The idea, he said, was to try to keep things going in hopes it would work out.

"These men did not try to put the company into bankruptcy," he said. "They felt if they could just hold on, if they could just lie a little longer, they could get to the next quarter and the next and they would survive. They felt the market wouldn't understand."

Berkowitz referred to Enron's use of off-balance-sheet partnerships as a "perpetual motion machine" because they were backed by Enron's own stock.

He boiled down the complicated partnership deals involving the LJM entities run by Andrew Fastow. "They desperately needed LJM to meet their earnings targets," he said.

He noted that the LJM structure wasn't illegal, it was the way Enron used it. "LJM was not a real third party and the evidence proves it overwhelmingly," Berkowitz said.

Similarly, Enron used the Raptor transactions, which were capitalized with Enron stock, to hide "dog assets." In other words, what was keeping money-losing assets off Enron's book was its own stock price, and when the stock began to fall, the whole structure began to unwind. That, Berkowitz argued, was information Lay and Skilling should have told investors.

Withholding that sort of information from the market is a crime, he said.

May 17, 2006

*162 questions and the truth*

Sean Berkowitz is addressing why the prosecution spent so much time on the issue of Photofete, the start up company run by Jeff Skilling's former girlfriend. Yesterday, the defense blasted the prosecution over the issue, saying it wasn't relevant to the case even though Berkowitz asked 162 questions about it when Skilling was on the stand.

"I didn't want to ask 162 questions," Berkowitz said today. "It took that many to get the truth."

Berkowitz said the relevance of the Photofete issue was that it showed Skilling's nature without the preparation of his attorneys and jury consultants.

"You got to see the true nature of the man when he was confronted with something he wasn't expecting. You saw him panic and you saw him lie. That goes to the heart of credibility."

Speaking to the broader testimony of Lay and Skilling on the witness stand last month, Berkowitz said:

"They were evasive. They denied clear documents, and they couldn't recall key issues. Together, both of them over 200 times couldn't recall key issues."

By my count, it was 239.

Berkowitz also attacked the defense's claims that critical newspaper reports caused Enron to crumble.

"The Wall Street Journal published the truth and Enron could not handle the truth. Senior management had been lying to the public for years and the truth was coming out."

Berkowitz also discussed Skilling's decision to leave Enron in August 2001. He noted that Skilling presented a list he made of 11 reasons for quitting. The question, though, isn't why Skilling left, Berkowitz said. In October, as Enron was imploding, Skilling made a bid to return, and the board rejected his offer.

"Here's a better question: Why didn't they want him back?"

May 17, 2006

*Business as usual?*

Prosecutor Sean Berkowitz began his closing arguments by zeroing in on the defense's arguments that Enron conducted its business like any other corporation.

"The defendants and their lawyers would have you believe that what you heard is business as usual in corporate America. If what you heard in these past four months is business as usual, I suggest we all take our money out of the market. They lied to their investors, they omitted critical facts, at times they put their own interests ahead of their investors and they lied to you from the stand. There were a lot of good people at Enron, but there were also a lot of people who committed crimes."

Berkowitz then went on to address the government's evidence.

"We have presented overwhelming evidence of a conspiracy at Enron," he said. Prosecutors put witnesses on the stand who said "I lied" and "we lied."

"That's a conspiracy," Berkowitz said. "A conspiracy is a fancy legal word for agreeing to do something that's illegal."

May 17, 2006

*The final fireworks*

Prosecutor Sean Berkowitz will take over for the final two hours of the prosecutors' closing arguments today. Berkowitz listened to the defense's attacks with his typical stoicism yesterday, but don't be surprised to see some hard-hitting comebacks today.

Look for Berkowitz to take on Chip Lewis' yelling rant against the prosecution: "Don't come to Houston, Texas and lie to us." Harvard intellect versus A&M linebacker. Should be an interesting final round.

May 17, 2006

*How will the jury rule?*

I've been asked that question with greater frequency as the trial builds to its conclusion. Of course, there's no way of knowing what the jury will decide -- or when it will reach its decision. But while we're waiting, you can weigh in with your best guess over at the Wall Street Journal's LawBlog.

Blogger Peter Lattman, who was in Houston for part of the trial, has posted this online poll. You can see the results here.

May 16, 2006

*The return of Ramsey*

Lay's tag-team defense has wrapped up with brief statements by Chip Lewis, who accused prosecutors of distorting facts to suit their case. "Don't come to Houston, Texas and lie to us," he shouted at the prosecutors' table. It was followed by the sound of a couple of people clapping.

Lay's lead attorney, Mike Ramsey, rounded out the closing arguments by telling jurors that "reasonable minds disagree on every point in this case."

"When you're saying 'not guilty' you're not saying 'innocent,' you're saying 'not proven,' Ramsey said. He told jurors that a not guilty verdict might be unpopular, especially with those of us in the media.

Sounding a little like Aragorn's speech rallying the forces of men before they stormed the gates of Mordor in the third Lord of the Rings movie, Ramsey said:

"There may be a court in America that bends to political pressure, but it's not this court. There may come a day when an American jury yields to a media mob, but it's not this jury. We're going to have a fair jury here."

With that, the defense wrapped up. The prosecution will have about two more hours of its closing arguments in the morning, then the case will go to the jury.

May 16, 2006

*Dissing Cortez*

One of the Ken Lay's attorneys, Mac Secrest, dismissed the testimony of Joanne Cortez, the government witness who testified that when she realized how Lay was using his line of credit to cash out of Enron stock, she cried in the stairwell.

Secret said Cortez was simply an "emotional witness," implying her testimony had no value.

Quite the contrary. Cortez -- who had no deals with the government by the way -- showed that Lay was using his Enron credit line as a virtual ATM, drawing millions of dollars out of the company as it failed.

Her testimony also undermined Lay's contention that he was a buyer of the stock. In fact, Cortez knew, probably before just about anyone else, that Lay was a big seller. And after he made his comment about being a buyer to employees, she took her knowledge to the FBI.

May 16, 2006

*Back on MSNBC*

I'm scheduled to make another appearance on Dan Abrams' show on MSNBC at about 3:10 p.m. Houston time today to discuss closing arguments in the Enron trial.

May 16, 2006

*A complete question and answer?*

Bruce Collins re-examined the issue of Ken Lay's stock sales. He noted that when Lay was asked by an employee about the stock in October 2001, Lay simply told the employee that he had bought stock.

"That's a complete question and answer," Collins said. He then went on to say that it disproved the government's allegation that Lay did not believe in

Enron. Lay had most of his net worth tied up in Enron stock, and tried to hold on to it, Collins said. "He tried to maintain ownership for as long as possible." Lay only sold to meet margin calls.

The problem is, that really has nothing to do with the point the government was making about the stock sales.

The government claims that Lay misled investors and employees by saying he was buying the stock, when in fact, he was selling far more stock than he bought in 2001. So in fact, the exchange Collins cited wasn't a "complete question and answer" at all. It was a complete question and a misleading answer.

May 16, 2006

*Failure is not an option*

Bruce Collins has begun the closing arguments for Ken Lay's defense by retreading much of what the jury already heard from Dan Petrocelli this morning.

The case, he argued, is not about failure. Referring to prosecutors, he said:

"What they really want you to believe is that because Enron went bankrupt, there must have been a massive fraud at Enron and Mr. Lay and Mr. Skilling must have been involved."

The way our system works, Collins said, is that corporations are rewarded for taking risk. When circumstances change, those same companies are punished without remorse. "What's great about our system is we don't punish those who take the risk."

This is the same tired "criminalizing business risk" argument that has become fashionable among the Enron revisionists. But just as this case isn't about failure, it isn't about risk, either. If anything, it's about the lack of risk, that fact that so many of Enron's deals lacked the risk that made them true business transactions.

Observers can debate the business judgments of Enron, Collins said, "but those judgments aren't crimes." Someone could question, for example, the board's decision to waive the ethics policy and allow Andrew Fastow to run the LJM partnerships.

"It's easy to question now, obviously, because we know Andy is a thief and a liar," Collins said, but that's not a crime because the decision was made in good faith.

Enron's response to Sherron Watkins' memo also can be debated, Collins said, but that doesn't mean Lay's decision to not call for a more stringent investigation is a crime.

Of course, taken as a whole, these decisions show a company under Lay's leadership that not only made bad decisions, but repeatedly attempted to keep the consequences of those bad decisions from coming to light.

"Mr. Lay has accepted full responsibility for the consequences of his actions," Collins said, recounting one of the more enduring myths of Lay's defense.

"Today you decide if Ken Lay is locked in a cage for the rest of his life," Collins said. "Today you decide if Ken Lay is a criminal."

May 16, 2006

*Petrocelli wraps up*

Defense lawyer Dan Petrocelli was clearly irritated that he didn't have more time to make his closing arguments. His client, Jeff Skilling, faces 28 criminal counts, while co-defendant Ken Lay faces six. Yet each gets almost the same amount of time for closing.

Petrocelli attempted to cast doubt on Skilling's stock sales by arguing that executives sell stock all the time, and that Skilling's attempt to sell 200,000 Enron shares just weeks after he quit the company was a simple attempt to diversify his investments.

Petrocelli then noted he was out of time, and built to his crescendo, which was attempted to raise reasonable doubt in the jurors' minds.

"If you hesitate, there's reasonable doubt. Do you think he's a crook without hesitation? Do you have any hesitation at all about him? If you do, he must be acquitted. Don't compromise in there. Don't negotiate with his life. Not guilty, not guilty, not guilty, 28 times."

With that, court broke for lunch. Team Lay takes over this afternoon.

May 16, 2006

*Call Causey, but don't believe him*

Defense attorney Dan Petrocelli is asking why the government didn't call Enron's former chief accounting officer, Rick Causey, as a witness.

"Where is he? Why didn't they call him?," Petrocelli demanded. "Why didn't we call him? We have no obligation to call him, they have the burden of proof. Call him in!"

Bombast aside, the reason prosecutors didn't call Causey is no doubt because they felt they didn't need him to make their case, an issue I discussed in this earlier post.

Petrocelli, though, contradicts his own argument. For the past few hours, he's argued that people who have deals with the government can't be trusted. No doubt, if Causey had been called, he would have been another of those "good people telling little lies" to help the government.

Unless of course he said what Petrocelli wanted to hear....

May 16, 2006

*Back to the bear hugs*

Dan Petrocelli said the most complicated business fraud trial in history comes down to three deals: the Nigerian barges, the Raptor transactions and the Cuiaba power plant in Brazil. Those are the deals in which Jeff Skilling allegedly promised Andy Fastow that Fastow's side partnerships wouldn't lose money, which Fastow called a "bear hug" agreement.

"They're trying to put my client in jail with bear hugs," Petrocelli said. "This is not a petting zoo, this is a criminal case."

Petrocelli argues that without the bear hugs, all the LJM partnership deals are legal. (Not if LJM wasn't run as an independent company, which it wasn't, but that's another matter.) Petrocelli's argument is that there was no bear hug because there's no document to prove it.

"Why would [Skilling] give Andy a guarantee? What's in it for him?" Petrocelli asked. What was in it for him was a chance to unload money-losing assets that no one else would buy, which made Skilling look like a successful executive instead of the incompetent failure that, regardless of the outcome of this case, we now know him to be.

May 16, 2006

*Hail to the chief*

Dan Petrocelli lashed out at prosecutors for bringing up Jeff Skilling's investment in Photofete, the startup company run by Skilling's former girlfriend. Prosecutors, he said, will no doubt bring up the issue in their rebuttal closing tomorrow, when the defense can't respond.

So if they bring it, Petrocelli said, "here's my response: It's a cheap shot. If that's the best they have to offer, I'm thankful for it."

Because even though Skilling acknowledged that he violated Enron's ethics policy, it doesn't speak to his character. For that, we should listen to former Fire Chief Robert Clayton. Of Skilling, Clayton said "Integrity, I guarantee it," and went on to say that he trusted the lives of his firefighters to Skilling's advice. Petrocelli argued that Clayton is a better judge of Skilling's character than a 5-year-old check to a former girlfriend.

That's all very dramatic, but of course, Clayton knew nothing of Skilling's conduct at Enron.

Petrocelli is now attacking the process by which the government investigated Enron and developed witness testimony.

"They have conducted a virtual autopsy on Enron after it's demise, looking at this corpse and trying to find something," he said. Prosecutors decided they would indict Skilling, then looked for something on which to build a case, using the mindset that "he must have known." So they "created" evidence, Petrocelli argued.

He then resumed his theme of arguing that people who have pleaded guilty are, in fact, innocent.

"It's hard to create fake documents, but it's not hard to create fake testimony," he said. "These people came up here and they didn't tell big lies, they told little lies. Because in their heart, these are good people - Fastow aside. These are good people.

That's how they build the whole case: coercion. What's on trial here folks is fear. "

It's an interesting tactic, but some of the most damaging testimony in this case came from witnesses like Vince Kaminski, Johnnie Nelson, Joanna Cortez and Christopher Loehr, who had no deals with the government and no incentive to get up on the stand and tell "little lies." And their testimony backed up the testimony of the witnesses who Petrocelli would have the jury believe lied under oath as part of a deal with the government.

May 16, 2006

*'He's antisocial'*

Jeff Skilling couldn't have spearheaded a conspiracy at Enron because he wasn't motivated by greed or stature, his attorney, Dan Petrocelli argued. "He's antisocial. He hated stature."

Skilling also wasn't that good at running Enron, Petrocelli argued. He made a lot of mistakes, such as not recognizing the problems with broadband. After that ringing endorsement of his client's incompetence, Petrocelli moved on to the government's claims of conspiracy.

Petrocelli attacked the notion that Enron's culture fostered the conspiracy:

"Culture is not a crime. He's not charged with leading a culture. He's charged with leading a conspiracy. Bankruptcy is not a crime. Failure is not a crime. "

Skilling, you may recall, made a bid to come back and "rescue" Enron in late 2001 as the company was unraveling. Why, Petrocelli wondered, would he do that if he had led a conspiracy? Why not just walk away?

"He's smart, but he's not sick. He's not a disturbed individual."

Skilling wasn't upset about Enron's demise because he was a crook, Petrocelli said. He wasn't upset because the fraud wasn't coming out. If he were a crook, he wouldn't have cared about the company. He would have transferred assets, tried to hide his money, Petrocelli argued.

...Or perhaps he would have tried to sell his Enron stock...

May 16, 2006

*High-octane Petro*

Dan Petrocelli began his closing argument by making no apologies for his passion.

"You bet I'm passionate. You bet I'm indignant. I'm representing a man falsely accused and on trial for his life. Who wouldn't be passionate? Who wouldn't be indignant?"

He also tried to strike an emotional chord in addressing jurors:

"For the past two years, I've felt like I've had Jeff's life in my hands, and I don't really want to let him go. I get to keep Jeff for three hours, and then I turn him over to you and his fate's in your hands.

"There's a lot of fears that I have that in the three hours I have with you folks that I'm not going to be able to explain things clearly ... that I'm not going to be able to reach your hearts and minds...that you're not going to be able to see the facts clearly."

Then, Petrocelli took an odd turn and started repeatedly using the word "conviction," which I'm not sure is a word I'd want to bring up under the circumstances. He said things like: "My client's had a lot of convictions," and "Jeff has never waivered from his convictions," and "he's got convictions about Enron."

Petrocelli went on to say that there was no evidence to support the prosecution's claims, and that Skilling had documents, records and evidence. "They have no story to tell. There's a hodge podge of issues."

He also lashed out at those of us in the press, who he said mocked his client for taking the stand and telling the truth. Actually, speaking just for myself, I mocked his client for getting on the witness stand and expecting the jury to believe his implausible drivel.

May 16, 2006

*Back in blog*

After missing what was apparently a pretty impressive closing argument by prosecutor Kathryn Ruemmler yesterday, I have returned to my seat in the overflow room and ready for what is sure to be quite a show by Dan Petrocelli, Skilling's defense attorney.

My colleague John Roper outlined the importance of closing arguments in this story from Sunday's Chronicle.

Even though the start of court is 10 minutes away, the overflow room is already, well, overflowing with spectators. In addition to the usual media horde, the room is teaming with lawyers and former Enron employees. And unlike the usual quiet demeanor, this group is loud. Everyone, it seems, is keyed up for what Petrocelli will say -- and, perhaps more importantly, how he'll say it.

May 11, 2006

*A few days without blogging*

I probably will be doing little blogging during the next few days because of a death in my wife's family. Unfortunately, I'll miss the first day of closing arguments in the Enron trial Monday, but I expect to be back in court first thing Tuesday. Sorry for any inconvenience, folks.

May 10, 2006

*Photofete lives!*

Well, sort of. Jennifer Binder, the erstwhile Enron photographer whose company -- and her relationship with codefendant Jeff Skilling -- became fodder for prosecutors, has recreated her defunct startup's web site.

According to this post on the Wall Street Journal's Law Blog, Binder wanted to set the record straight on her business and its dealings with Enron.

"It's been frustrating to be dragged into something like this," says Binder. "I still have to run a business and my credibility is important to growing that business. I have nothing to hide and I'm proud of the work I did for Photofete."

No one, of course, ever even implied that Binder or Photofete did anything improper. The issue was relevant only because Skilling and Ken Lay invested in the company, which had a $450,000 contract with Enron, and never disclosed the conflict, as required by Enron's ethics policy.

Photofete has nothing to do with the charges against Lay and Skilling, but their handling of the issue speaks to their credibility. And as insignificant as Photofete was in the greater scheme of Enron, it's an issue that seemed to resonate with jurors.

Binder, by the way, has moved on. Photofete failed in 2003 and she now has a new company, Secure Digital Assets.

May 10, 2006

*It's Crier time again*

I'm scheduled to make another appearance on Court TV's Catherine Crier Live today between 4:30

p.m. and 5 p.m. Houston time. We'll be talking about -- you guessed it -- the end of testimony in the Enron trial. After the show, I'll once again host a live chat session on Court TV's web site, so feel free to log in and ask your questions. By the way, you can also find archives of previous chats using that link as well.

UPDATE: In the immortal words of Emily LaTella, "Never mind!" Turns out I got bumped from Crier's show. But I'll still be hosting the chat session.

May 10, 2006

*Did the defense make its case?*

Some of the comments to recent Enron trial posts have examined various aspects of the defense's case. In my column today, I offer my assessment of the defense, which I found surprisingly weak and implausible given all the buildup.

Rather surprisingly; Lay proved to be the biggest problem for the defense. His combative attitude on the stand, which I discussed previously, undermined the credibility of his claims.

Skilling did better than I expected, but his testimony often contradicted itself and frequently defied common sense. Lay wants to convince the world of his view of Enron; Skilling wants to outsmart the jury.

In the end, most of the other witnesses added little, with the exception of Joannie Williamson, who did some damage to prosecution witness Mark Koenig's testimony. As I said when the defense began putting on its case, what mattered was the credibility of Lay's and Skilling's statements on the stand.

Then there's the question of other witnesses who didn't come forward because they invoked their Fifth Amendment rights against self-incrimination. My colleague Mary Flood details the issue in this story today. Did this really hamper the defense? Is the prosecution or the judge obligated to grant immunity to those witnesses, who may, after all, testify to committing crimes themselves? Is the defense, at this point, just looking for excuses?

And what of the broader question: Did the defense make its case?

UPDATE: Tom Kirkendall over at Houston's Clear Thinkers has already weighed in, calling my column and this blog "vile." Vile? Sheesh, Tom, that kinda hurts. As many of you know, Tom and I disagree on the Enron case. That's not surprising given that Tom represents in civil proceedings several of the potential witnesses that the Lay-Skilling defense team is complaining about not being able to call in this case. Tom doesn't make that clear to readers of his blog, but he has biases of his own.

He also believes that Enron is a case of the government criminalizing business risk, a frequent theme of his posts. Enron, of course, isn't about risk. It's about deceit. The problem is not that Enron took risks, as all businesses must do. The problem is that it violated accounting rules, distorted its financial condition, and then tried to hide it from investors and its trading counterparties.

Now that is vile.

May 09, 2006

*Gig 'em Seahawks*

Texas A&M has settled its lawsuit with the Seattle Seahawks over use of the term "12th Man."

The Seahawks acknowledge Texas A&M's ownership rights in the mark and will continue to use the mark under license in connection with the Seahawks' operations, promotions and fan activities in the Pacific Northwest.

Financial terms weren't disclosed, but you can bet they were hefty. A&M's athletic program doesn't do anything cheap these days. So it's not surprising that rather than fight for the sanctity of the 12th Man -- a term, by the way, the university felt was important enough to trademark -- A&M decided to sell the rights to the highest bidder. So much for time-honored tradition.

I attended the Maroon and White scrimmage game last month, and I remember thinking how at least A&M had resisted the temptation to sell naming rights to Kyle Field. But if the 12th Man is for sale, can Morgan Stanley Kyle Field be far off?

May 09, 2006

*Open comments on executive stock options*

In a recent comment, Forest asked if we could discuss my April 22 column on executive stock options. I'm always happy to use the blog for feedback on my columns, as well as for follow ups on I've topics covered.

The issue is what's known as "options timing" in which executives are granted options at the bottom of the market. That means if the stock rises -- which is the goal of options after all -- executives get an extra bonus. Options timing is difficult to prove. The Wall Street Journal recently took a novel approach, calculating the odds by which companies have granted executives options at the bottom of the market year after year. In one example, Affiliated Computer Services of Dallas, they found the odds of timing grants so perfectly were 300 billion to one.

All of this has gotten more attention recently as UnitedHealth Group chief executive William McGuire acknowledged $1.6 billion in unrealized gains from options.

The Securities and Exchange Commission is now investigating whether some companies back-dated options to award them at market lows, according to the Journal.

So is this just another way for executives to game the system? If so, what should be done about it? Or is this all just a very fortunate coincidence for some very fortunate executives?

May 08, 2006

*Dell-emma*

Dell said its first-quarter earnings will fall short of estimates -- something that happened enough last year that this is becoming routine.

Dell's been slashing prices to fend off increasing competition from Hewlett-Packard, but it hasn't been working. So far, what Dell has to show for its frenetic discounting is another weak quarter. Chief Executive Kevin Rollins has said the company will sacrifice profit to win sales. So far, it seems it's doing neither.

Dell's biggest blunder came last year, when it announced it would introduce higher-priced systems for back-to-school, spurring PC buyers to snap up cheaper machines from HP. Dell missed forecasts twice last year.

The results are in the numbers: Dell's shares are down 12 percent this year, while HP's are up 18 percent. Dell is on track for its worst financial performance since 2000.

Rollins' promises of "bold" but unspecified new products are wearing thin.

May 08, 2006

*MSNBC alert*

I'll once again be appearing on Dan Abram's show on MSNBC this afternoon about 3:15. We'll be talking about how the defense did in the Enron case and what's coming up in court.

May 05, 2006

*Foreign ownership of our friendly skies?*

Since the Enron trial wrapped up early this week, and since I'm feeling a little over-Enroned anyway, let's shift our weekend discussion to another of my favorite topics: airlines.

Earlier this week, the U.S. Department of Transportation released new proposed guidelines for foreign ownership in U.S. carriers.

Not surprisingly, U.S. airlines say the new rules go too far, while foreign carriers say they don't do enough. The DOT originally proposed these rules in November, and later revised them.

Earlier in the week, Continental issued this statement, which says:

While the revised DOT proposal purports to allow a U.S. shareholder majority to revoke foreign control of airline operations, this proposal makes it clear that foreign investors will be allowed to control all significant decisions at a U.S. air carrier and highlights the unworkable nature of bifurcating control of a corporation.

Potential foreign investors also don't like the proposal. In this article from yesterday's Financial Times, British Airways says it was:

> "disappointing the proposal has been neutered, as U.S. investors can revoke any decision made by foreign investors without constraint. This is a snub to the EU and they need to go back to the negotiating table for further talks with the U.S."

Foreign investment in U.S. carriers has been eschewed in the past because airlines were seen as a vital part of the transportation network. With the proliferation of carriers since deregulation, though, it seems unlikely that any foreign investor could exercise meaningful control over our aviation system.

Given the sorry state of the U.S. airline industry, does it now make sense to open things up to foreign investors? After all, U.S. executives have shown a profound inability to fix the problems. Should we allow, say, a Richard Branson to step in? Would struggling U.S. airlines benefit from access to domestic markets in Europe? Are we on the cusp of a global aviation market?

By the way, if you want to submit a comment on the proposal to the DOT, you can do so here. The agency is collecting public comments for about the next two months.

May 04, 2006

*Causey and effect*

I'm not in court today, but I've been reading our TrialWatch blog, which says prosecutors announced in court they don't plan to call Rick Causey, Enron's former chief accounting officer, as a rebuttal witness.

Almost since this trial began there's been speculation that prosecutors were keeping Causey on hold, planning to use him to drive home their case in the final days. The defense, too, has indicated they might call Causey, who was a defendant in this case until just days before the trial began.

Sam Buell over on our Legal Commentary blog provided this analysis of the Causey plea back in March.

Over the past few weeks, I'd been wondering if either side would call Causey. He has no deal with the government to testify. On the one hand, he could shine some light on key parts of this case, such as the global galactic agreement with Andy Fastow. On the other hand, he could provide testimony that would help the defense. Or he could do a little of both. Or he could plead the Fifth.

No one knows, in other words, exactly what Causey might say. At this point, the government's case is strong enough that prosecutors probably don't want to take the risk. For that matter, the defense probably doesn't want to gamble this late in the case either.

So what does everyone think? Why has the government decided to pass on Causey? What would it gain or lose from his testimony? And what about the defense?

Please discuss.

May 03, 2006

*Counter intuitive*

Sen. Byron Dorgan of North Dakota has put up this windfall profits counter on his Web site. Dorgan is behind the drive to levy a hefty tax on oil companies and return it to consumers. According to his site, oil companies are making $226.8 million a day in "cumulative excess profits," whatever those are.

It's all very cute, but maybe instead of wasting his time with flickering lights, or for that matter, ill-conceived taxes, Dorgan and his congressional cronies could come up with a meaningful energy policy.

May 03, 2006

*Eyes wide open*

I guess I was having a little trial withdrawal today, because I decided to drop by and see how things were going with the expert witnesses. I got here soon after prosecutor Sean Berkowitz began cross-examination of accounting expert Walter Rush.

Rush is insisting the Enron's accounting and its use of reserves to shore up earnings was proper.

It's pretty dull stuff, even as he wrangles with Berkowitz over the intricacies of accounting rules. Rush basically disagrees with the testimony of former Arthur Andersen accountant Tom Bauer.

Given that Bauer's testimony was some of the dullest in this trial so far, you can imagine what it takes to listen to Rush.

The most interesting thing about Rush is that he rarely blinks. I mean like about once every three minutes. It's incredible. I'm trying to go as long as he does between blinks, and my eyes are burning.

After a lengthy discussion about reserves, Rush made this startling statement:

"I don't have any knowledge. I never thought about it like that but you could be right." And this is expert testimony?

A fellow reporter here in the overflow room just began packing up his stuff and announced that he's leaving for Lubbock. I am actually jealous.

May 03, 2006

*The sound and fury*

The Chronicle's Mark Babineck has this story in today's paper in which lawyers weigh in on Ken Lay's testimony. Most are critical of Lay's acrimonious stance, which came across in both his frequent sparring with prosecutor John Hueston as well as his arguments with his own attorney.

So the question is, why did Lay do it? Didn't his attorneys tell him how to behave in court? Could this all be blamed on the absence of lead attorney Mike Ramsey to health problems?

I'm sure Lay's attorneys coached him better. And I don't believe Ramsey's presence would have mattered much. After all, Lay could have asked for a continuance in the case to give Ramsey time to recover. As I said before, Lay ran this case. He bossed his lawyers around just as he no doubt bossed Enron's lawyers around.

What came across in Lay's five plus days on the stand is a man who is angry and indignant. How could he, a captain of industry and philanthropist, be accused of such crimes? What we saw on the stand wasn't testimony, it was payback. Lay didn't care about creating reasonable doubt in the minds of the jury, he wanted his shot. He was lashing out at his accusers.

That -- as Dan Petrocelli no doubt impressed upon his client, Jeff Skilling -- comes later. Get the acquittal first. Then you have all the time you want to berate your accusers.

The bottom line, after almost 14 days of listening to the Lay and co-defendant Jeff Skilling tell their side of the Enron story:

Skilling is seeking acquittal. Lay wants vindication.

May 02, 2006

*Blogging slowdown*

With Ken Lay off the stand, I will be ducking out of the Enron trial to work on my column for tomorrow, so expect little or no blogging this afternoon. If you want to know what's going on with the experts and character witnesses, you can keep up with the trial at the Enron: TrialWatch blog.

May 02, 2006

*Not for nothing*

Martin Siegel, a New York attorney who represented Ken Lay, discussed Lay's attempts to settle the outstanding loans that Lay had with Enron. Enron's creditor committee sued Lay in 2003 in an attempt to recover money he still owed the company.

That settlement was sent to prosecutor John Hueston, who didn't approve it, and "the settlement died," Siegel said. The testimony refers to Lay's earlier statements that Hueston blocked his effort to repay his debts to Enron.

Siegel, by the way, has a thick New York accent, but he looks like Edward James Olmos' Admiral Adama from the new Battlestar Galactica.

On cross-examination, prosecutor Sean Berkowitz noted that Siegel has no knowledge of whether Lay attempted to pay off the debts before Enron's creditors sued him. He also noted that Siegel, on Lay's behalf, moved to dismiss the suit. And the $7.5 million outstanding on Lay's line of credit, the money he kept after selling stock back to the company during 2001, wasn't even covered in the suit because it wasn't due until 2005.

The proposed settlement included a release from Enron, basically a promise that it wouldn't sue Lay in the future. Lay also wanted the return of annuities that would pay Lay about $80,000 a month for life. He had previously sold them back to Enron for $10 million, Berkowitz said. Lay also wanted Enron to forgive the $7.5 million.

Siegel then said he couldn't recall if Enron's board had signed off on the agreement or whether the board ever actually saw the proposed settlement.

The final settlement was circulated for signature on July 6, 2004, two days before Lay was indicted.

Berkowitz noted, and Siegel agreed, that Lay has never repaid the loan, and that the stalled settlement with the creditors wouldn't keep him from doing so.

Which gets to my earlier point that Lay wasn't willing to pay money he owed to Enron's victims unless he got something in return.

May 02, 2006

*Who's the monkey now?*

On recross, prosecutor John Hueston asked Ken Lay about his earlier statements that his lawyer had called former Enron treasurer Ben Glisan a "trained monkey," not merely a "monkey."

Hueston asked Lay if he thought that the distinction somehow lessened the "slur" against Glisan. Hueston then referred to Lay's testimony as defending the earlier comments of his attorney, Mike Ramsey, who's been absent from the trial during the past month because of health problems.

"I'm not trying to defend my monkey - my attorney," Lay said, as the courtroom erupted in laughter. After things settled down, Lay added: "I'm sure glad Mr. Ramsey is not here today."

Things quickly returned to the acrimonious tone that has been the standard for exchanges between Lay and Hueston. Hueston noted that Glisan had no deal with the government and was serving the final months of his prison sentence after pleading guilty to crimes committed at Enron.

"He has nothing to gain by lying and everything to lose," Hueston said.

Lay maintains that the government enticed Glisan's cooperation through harsh treatment. "No, I think he was just put in solitary confinement so he could work your will," Lay snapped.

With that, Hueston wrapped up:

"You have a long list of people to blame for Enron's collapse, and it gets longer the longer you testify in this trial. Your list of events to blame and people to blame did not include yourself."

Lay said he was sure he had made mistakes, and that he noted in his testimony that hiring Andrew Fastow and promoting him to chief financial officer were two of his biggest.

"Which is a self-serving statement for you at this trial," Hueston shot back.

Lay said whether it was self-serving or not, the fact is "without Andy Fastow, Enron would not have failed."

That pretty much wrapped up Lay's testimony.

May 02, 2006

### *Forward-looking hooey*

On redirect, Ken Lay addressed the ridiculous valuations that his co-defendant Jeff Skilling put on Enron's various businesses in early 2001. Lay argues that Skilling wasn't saying what Enron's businesses were worth, he was saying what he thought they would be worth.

"He was looking to the future as to what he thought those businesses would be worth," Lay said. Lay supports this argument by saying that Skilling referred to the boiler plate legal disclaimer about forward-looking statements.

Now, what Skilling said at an analyst conference was that he thought Enron's broadband business was worth $40 a share, or $32 billion. Right then. Not in the future.

Now, Skilling did make predictions on that call, such as that Enron's stock would reach $160 in the coming year, but his statements about the value of the businesses were current assessments, one that in fact Skilling repeated in other interviews at the time.

And in fact, in Skilling's own testimony, he back pedalled on the valuation, but he never claimed he was making a prediction for the future.

May 02, 2006

*The Nixonian Ken Lay*

One of the more surprising elements of this trial has been Ken Lay's demeanor on the stand. The affable grandpa has been supplanted by an angry and arrogant bully, a chief executive who doesn't seem to understand he's not in charge any more. Most of us watching the trial expected vitriol from Jeff Skilling, but it was Lay who proved the more difficult and combative witness. Which has led to some odd comparisons with Richard Nixon, not exactly the image that a white-collar defendant wants to conjure.

Last week, especially during cross-examination, Lay's face seemed to grow long in the jowls. His repeated denials and statements like "I did not," gave him a Nixonian appearance. I thought maybe it was just me. After all, Paula Rieker reminded me of Nancy Reagan, Wesley Colwell of William Hurt, Ken Rice of that guy Spence from "King of Queens."

But now I've seen several other Nixonian references with regards to Lay's time on the stand. There's this column by Bloomberg's legal affairs columnist Ann Woolner that said Lay on the stand was "looking increasingly Nixonesque. His jaw thrust forward, his mouth turned down, his eyebrows almost formed a V above his nose."

Then there's this this story from Time.com, which says.

Like Nixon, Lay's face naturally falls into a frown. On the stand, his brows drew together. His tongue flicked back and forth hitting the corners of his mouth.

(I don't remember Nixon doing the tongue thing. It was disturbing enough seeing Lay do it.)

And finally, attorney Michael Wynne, who posts on the Chron's Legal Commentary blog, raised the image in a podcast that I did with him, reporter Mary Flood, and defense attorney Stanley Schneider on Friday.

Not everyone thinks Lay looks like Nixon, though. In an earlier comment, "Taylor" made the point that Lay actually looks like the Klingon General Kor from the "Errand of Mercy" episode of the original Star Trek series.

May 01, 2006

*Mark Lay was a seller, but not a short seller*

Under redirect, Ken Lay is addressing the prosecution's contention that Lay's son Mark sold short Enron in early 2001. Lay said in examining his son's brokerage statements in more detail, he determined that Mark Lay was transferring stock from another account in placing a sell order on his Enron stock. The shares apparently didn't arrive in time, so the broker shorted the stock to lock in the price. When the shares arrived later that day, the broker covered the trade, Lay contends.

So Mark Lay wasn't exactly selling Enron short. He was simply bailing out of his dad's company just months before it cratered in bankruptcy.

May 01, 2006

*More monkey business*

On redirect, Ken Lay clarified comments his attorney, Mike Ramsey, made about former Enron treasurer Ben Glisan. Lay said Ramsey didn't just call Glisan a "monkey," he called him a "trained monkey."

"I think Mr. Ramsey was indicating that basically that Mr. Glisan was a mouthpiece for the prosecutors," Lay said, trying to be jovial and warm now that he's fielding softballs from his own attorney.

So "trained monkey" is somehow less of an insult? What about Ramsey's comment that Glisan "contradicted the whole theory of intelligent design"?

May 01, 2006

### *One million for the road*

Prosecutor John Hueston wrapped up his cross-examination of Ken Lay by noting that Lay withdrew $1 million remaining on his line of credit with Enron a day before a planned merger with Dynegy died. The Lay Family Foundation, a charitable trust controlled by Lay's wife, Linda, sold 500,000 shares just hours before the companies issued a press release calling off the merger. (Ken Lay is listed as the beneficial owner of the shares.)

Hueston noted that while Lay managed to pull a final million bucks out of the failing company, he sent an email to employees saying that if the company filed for bankruptcy -- which, of course, it did -- they could expect to get only about $4,600.

That $1 million, by the way, is part of the $7.5 million that Lay still owes Enron.

May 01, 2006

### *Lifestyle choices in Lay's World*

Prosecutor John Hueston noted that the same year Ken Lay canceled the employee Christmas party at Enron because it would have been "imprudent" in light of the company's financial problems, he was making no such cutbacks at home.

In addressing whether Lay could have reduced expenses rather than sell Enron stock back to the company, Hueston noted that Lay paid $200,000 to charter a boat called the "Amnesia" in February 2001. Lay noted said the boat was for his wife's birthday.

On April 27 of that year, Lay sold $4 million worth of Enron stock back to the company about the same time he spent more than $12,000 for a resort stay. That was to celebrate his birthday. "So you can see that my birthdays are cheaper than my wife's birthdays," Lay quipped.

In mid-May, Lay and his wife were vacationing in the south of France and Lay called back to the U.S. to sell another $4 million in Enron stock. That same month, he also invested $588,000 in a private equity deal. He also spent $20,000 on antiques.

"It could be my wife found something she really liked," Lay said, saying he didn't recall the purchase. Maybe she later sold it at Jus' Stuff.

"We were living a very expensive lifestyle. It's the kind of lifestyle that's very difficult to turn off or on like a spigot," Lay said. Indeed, it seems it was the kind of lifestyle you had to turn off with a flood gate.

May 01, 2006

*Of hock and stock*

Prosecutor John Hueston has returned to the issue of Ken Lay's personal stock sales. Lay, you may recall, would borrow money from Enron and then repay it with company stock, which didn't have to be disclosed immediately.

At the same time, Lay told employees he was a buyer of Enron stock. Lay explained last week that he didn't count the sales, which far exceeded the purchases, because they were forced sales to meet margin calls.

Lay bought about 68,000 shares of Enron stock in August 2001. On the same day, he sold 110,000.

Hueston showed that Lay had other lines of credit he could have drawn down to meet the margin calls. For example, he had almost $6 million available on a Bank of America credit line. Instead, he sold stock back to Enron. Hueston then showed an e-mail from Lay's stepson, who was also his personal accountant, asking if Lay wanted to sell Enron stock or draw down the other credit line to meet the margin calls.

"The choice was clear: sell Enron stock or use your bank of America line of credit," Hueston said. "You chose to sell Enron stock."

In August, Lay sold $4 million worth of Enron stock back to the company. He used only $200,000 of it to meet margin calls. The rest went to pay down personal debt.

Between Aug. 20 and Sept. 4, Lay sold $20 million worth of stock back to Enron, Hueston said.

Lay argued that he couldn't recall if there were any other personal financial issues that could have influenced his decisions. "I presume you think you know everything the banks were telling my people," Lay said.

Hueston said the $20 million sales couldn't have been the result of margin calls because Enron's stock didn't fall enough to generate margin calls of that size.

Hueston noted that Lay chose to sell Enron stock in 2001 at times when he could have sold other stock. For example, Lay had about $3 million worth of investments in companies such as Applied Materials, AOL Time Warner, Berkshire Hathaway.

All told, Hueston produced statements that showed Lay had $7.9 million in four separate accounts that held other company stocks. That was in addition to $6.75 million in other lines of credit and some $30 million worth of real estate holdings.

"You chose to sell Enron stock rather than other company stock that you held."

Lay said that's because 90 percent of his net worth was tied up in Enron stock, and "that's where most of the collateral was."

"You really weren't forced to sell that Enron stock," Hueston said. He's attempting to show that Lay's decision to sell Enron contradicts his earlier statement on direct testimony that he was trying to sell as little Enron stock as possible in 2001.

By the way, speaking of Lay's real estate holdings, one of his Aspen houses was on a street called "Shady Lane."

May 01, 2006

*The DASH dance*

A key part of Ken Lay's doofus defense is that he didn't know about the LJM deals that Andy Fastow was doing on the side, buying troubled assets from Enron. Jeff Skilling, for example, testified that he didn't sign off on the deal sheets, known in Enron's internal lingo as a "DASH sheet," because he didn't think he was required to.

Prosecutor John Hueston noted that Enron's 8-K filing with the Securities and Exchange Commission in November 2001, clearly stated that the office of the chairman was supposed to sign off on the deals:

The Board required review and approval of each transaction by the Office of the Chairman, the Chief Accounting Officer and the Chief Risk Officer.

Hueston then produced Lay's handwritten notes from an Oct. 6, 2000, meeting of Enron's finance committee in which he wrote that Skilling, along with Chief Accounting Officer Rick Causey and Chief Risk Officer Rick Buy were supposed to sign all the LJM deals. In other words, Hueston used Lay's notes to take a whack at Skilling.

Lay said he didn't recall exactly what the notes were, but that he thought they reflected what Fastow told the committee.

May 01, 2006

*A Raptor by any other name*

Under cross-examination, Ken Lay is growing increasingly agitated with prosecutor John Hueston. Hueston asked about a meeting of Enron's audit committee in October 2001, when Ken Lay called the Raptor transactions the "the second most contentious vehicle next to LJM." Eight days later, Enron released its third-quarter earnings, which included unwinding the Raptor deals, resulting in a $1.2 billion writedown to shareholder equity. In an interview with the Wall Street Journal and on a conference call with analysts, when Lay was asked about the name of the vehicles involved in the writedown, Lay said:

"I'm not sure it had a name. It was an internal vehicle that was set up for financing assets. I'm not even sure if it had a name."

Lay acknowledged that he said it didn't have a name, but that was because he couldn't recall it, and if he did, he wasn't sure that the name had been used outside of Enron.

"I was an honest mistake, Mr. Hueston," Lay said. "Nothing sinister, nothing criminal, I hope. I didn't see that in your indictment, I'm very sorry about that."

Lay said his confusion might have been because he was reviewing a lot of things at the time, and there were lots of transactions with code names, and some of them had no meaning outside the company.

"Again, you're being very selective as you usually are," Lay told Hueston. Lay then said the importance of the name wouldn't have mattered even if investors had known.

"The importance is that investors were trying to get information and you lied to them and let's move on," Hueston said.

But Lay, who had refused to give concise answers all morning, got indignant.

"Can you share with the jury what great insight that immediately would have given them?" he demanded.

Hueston didn't, but I'll give it a shot. Analysts and investors had no idea that Enron even had such a vehicle, so they were entitled to more information, not less. Lay's statement that he couldn't recall the name was an attempt to minimize the significance of the Raptors to Enron's increasingly precarious financial position.

In her earlier testimony, former corporate secretary Paula Rieker called the Raptor unwind "an accounting error," a term Lay didn't use with the market. As Rieker noted:

By not using the name, Enron didn't make clear to analysts what its financial obligations were under the arrangement. After the conference call, Rieker said she received calls from analysts asking about the $1.2 billion writedown, saying they hadn't heard the number on the call.

May 01, 2006

*A 'hate-on' and the doofus defense*

Ken Lay says he didn't believe the Wall Street Journal when it sent a list of questions about the LJM partnership to Enron in September 2001. Those questions, by the way, were sent at Enron's request. At the time, Lay told other Enron executives he believed the paper had a "hate-on" for Enron.

As a result, Lay apparently didn't put the pieces of the LJM puzzle together. The day Lay fired Andy Fastow, for example, Enron treasurer Ben Glisan came to Lay's office and asked if there Lay had a problem with Glisan having "a private equity investment."

Even though the Journal had asked about Glisan's LJM involvement a month earlier, Lay didn't think there was anything odd about the question. Lay said Glisan didn't offer more details and Lay didn't asked for any. Prosecutor John Hueston then said Lay had blessed Glisan's LJM role because he needed Glisan to stay at Enron.

"I did not bless his participation," Lay said. "I had no reason to believe that he was involved in anything that was inappropriate at that time."

Ah, yes, the doofus defense. The company's falling apart amid allegations of executives profiting from secret side deals, but there'd be no reason for the chief executive to ask any questions.

Hueston then recounted Glisan's testimony in which Glisan recounted how much he'd made by investing in Fastow's secret Southampton partnership deal.

"He didn't say that," during their meeting, Lay said. "Mr. Glisan is under a lot of pressure from you and your associates, and I suspect he's quite willing to mold his testimony to fit your will."

May 01, 2006

*A body of testimony*

Prosecutor John Hueston ran through about a half dozen messages -- e-mails, written memos and voice mails -- from Enron employees, including vice presidents, that raised concerns about Enron's accounting in late 2001 and even the possibility of criminal activity.

Lay continues to argue that Hueston is selectively picking negative comments.

"How many e-mails does it take for you to ask a single question of Andy Fastow?" about how much money he was making off the LJM partnerships, Hueston asked.

Lay said until Oct. 22, 2001, when the Wall Street Journal raised the possibility that Fastow was making far more from LJM than the board thought, there was no reason to ask him questions. The board believed the LJM structure was sound, and that it was independent.

"The independence of that entity was very important," Lay said. Important, yet apparently not important enough that Enron separated its payroll from LJM.

Then Lay offered up this little fail safe of corporate governance:

"There was nothing to stop Andy Fastow from coming to the board and telling us what he'd been doing, but he didn't do that either, did he, Mr. Hueston?"

Rest easy, ye Enron shareholders. The company's board was willing to listen to any crooks in their midst, if only they had come forward.

Lay said he was "getting information from all sides" and that the emails were just a few among many, some of which urged him to support Fastow. He again accused Hueston of picking select information to make his case.

"The corpse is on the gurney now, Mr. Hueston, and you're carving it up any way you want to carve it up," Lay said. Of course, Lay's doing a little creative carving himself....

May 01, 2006

*Ding! Ding! Lay versus Hueston, round two*

Ken Lay's cross-examination resumed this morning and Lay came out swinging. When prosecutor John Hueston referenced a management meeting in The Woodlands in late 2001 and noted that Enron discussed aggressive accounting, Lay bristled and accused Hueston of taking the notes of the meeting out of context.

"Aggressive accounting does not mean illegal accounting, Mr. Hueston, you've tried to paint that picture before," Lay said. He noted that Enron's auditor, Arthur Andersen, approved the accounting. "Arthur Andersen, right up until its demise, defended Enron's accounting."

Not exactly what I'd call a stellar defense -- hiding behind the firm with a recidivist history of blown audits.

"Some behavior that you've called aggressive, others have called criminal," Hueston said.

Hueston then noted that Lay had in previous interviews defended junk bond king Michael Milken and his firm, the now defunct Drexel Burnham Lambert. Lay said he still believes that Drexel pioneered creative financial instruments. Hueston noted that Drexel collapsed and that Milken pleaded guilty to securities fraud and paid $900 million in fines.

Lay acknowledged that Milken and Drexel had a "run on the bank back in the 80s."

"Another unfortunate run on the bank?" Hueston asked.

"Failure is not equated with criminal activity," Lay said.

Lay then argued that Drexel's demise had anything to do with aggressive accounting and told Hueston he'd like to see the facts behind that. But no, this is about Enron, and its Lay who's on trial.

# APPENDIX BW

## *More than four years after their high-flying company collapsed amid a wave of accounting scandals, Jeff Skilling and Ken Lay will stand trial starting this week for conspiracy, fraud and a host of other charges. The key question is: What did they know, and when did they know it?; JUDGMENT DAY FOR ENRON*

THE HOUSTON CHRONICLE

Sunday, January 29, 2006

4 STAR EDITION

Section A, page 1

By Mary Flood, Staff

Prosecutors want this trial to be short and simple. Ken Lay and Jeff Skilling will be going for something else entirely.

The momentous Enron trial that starts Monday will be a battle of trial strategies, wary witnesses, dueling documents and wits between two formidable teams of lawyers. Everything will matter to them - including what the jury thinks of their clothes and whether the government's star witness appears credible.

The prosecution wants to prove that ex-Enron Chairman Lay and ex-CEO Skilling conspired with a host of greedy underlings to lie about Enron's value to line their own pockets. The Enron Task Force would certainly not mind if jurors have some lurking negative feelings about Enron being, say, a den of financial iniquity.

But prosecutors want to focus in court on the two accused men: what they knew and when they knew it. What they said and when they said it. The government will try to do so as much as possible from the mouths of people who have confessed they were part of a criminal conspiracy at Enron.

"How can the government win this case? To put it bluntly - by not getting carried away. They'll want to stick to the facts and get this to the jury as soon as possible," said Jacob Frenkel, a Washington, D.C.-area former securities prosecutor who has followed the case. "They don't want to get creative. They overtried Arthur Andersen and overreached on the jury instruction that overturned the case."

Meanwhile, Lay and Skilling will want to humanize themselves and their accusers, hoping to convince the jurors that most of those with plea agreements who testify things were awry at Enron are lying for fear they would wind up with even bigger prison terms if they didn't.

But the idea that most everything at Enron was just fine is likely to be a pretty hard sell.

So the defendants and their lawyers will focus a lot on intricate accounting and tortuous financing in hopes that jurors will decide these guys at the top could not have understood everything that was going on no matter how much of it was shaky.

They want to walk a line that makes Skilling and Lay appear competent but allows that they relied in good faith on subordinates and outside professionals. Also count on Lay and Skilling to use a lot of academic-sounding expert witnesses to explain how businesses operate and suggest the government is just trying to criminalize normal corporate customs.

"The key for the defense is to put aside the baggage that is Enron, get the jury to see their clients as individuals and show why each of these transactions was business as usual," said Robert Mintz, a New Jersey-based former prosecutor who follows the Enron cases. "The longer, the more technical this gets, the more it hurts the government."

Skilling faces 31 charges of conspiracy, securities fraud, lying to auditors and insider trading.

Lay faces seven charges of conspiracy, securities fraud and wire fraud. He also faces four separate personal banking charges that he will be tried on after the Enron case and before the judge only.

The basic idea in the government's case is that Skilling and Lay allowed Enron's financial results to be manipulated through a series of schemes and made false and misleading statements to the public to bolster Enron's stock price and enrich themselves through salaries, bonuses, grants of stock options and other means.

The government has pulled a lot of resources into the Enron Task Force, which is on its third director and has a dozen top trial lawyers from across the country. Eight are focused on this case, headed by

Chicago prosecutor Sean Berkowitz and Washington, D.C., prosecutor Kathryn Ruemmler.

Spending heavily Lay and Skilling, before they were indicted and their funds frozen, invested a combined $38 million or so into their criminal defense. And that's above and beyond millions covered by insurance.

That war chest has purchased high-quality, nonstop legal filings. The work largely has been borne by the Skilling camp - a clever crew of partners and minions from Daniel Petrocelli's law firm O'Melveny & Myers. Their requests - joined by Lay - for more time, more discovery, more access to witnesses, a different city for trial and many other things have been denied by U.S. District Judge Sim Lake more often than not.

Despite their different personalities, Californian and civil lawyer Petrocelli and Houston criminal defense legend Mike Ramsey - who represents Lay - have presented a united defense. One of the most interesting things to watch strategy-wise will be how they proceed with the arguments they revealed through a luncheon speech Lay gave in December and in interviews with them.

"There is a lot of tension there," Mintz said of the defense strategies that have been publicly issued.

One place where the defense could have trouble with that tension, he said, is in trying to create an image of the capable but unknowing persona for Lay and Skilling. The men want to appear that they were doing a good job running a successful company yet could not be expected to know about the secreted fraud of ex-CFO Andrew Fastow and a few others close to him - the only criminality at Enron they are expected to acknowledge.

One way to ease that tension is to argue that a line of government cooperators with plea deals not linked with Fastow are lying.

"It seems unlikely they can accomplish this. They'll have to show that more than a dozen possible witnesses and their independent counsel analyzed the cases and the evidence and all came to the conclusion they should plead guilty to things they didn't do," said Philip Hilder, a lawyer for a number of Enron witnesses, including Sherron Watkins, who warned Lay about an impending accounting scandal and likely will testify in this case.

The defense also has the problem that Judge Lake has ruled that it cannot allege prosecutorial misconduct or that prosecutors bullied witnesses, because the judge has found that this did not happen.

"Everything the defense has said until now is rhetoric. All that matters is what comes in at trial. They may have tried out some defenses in the court of public opinion, and they will use others in trial," Hilder said.

Witness possibilities

One of the tactics the defense has not discussed much but that former co-defendant Richard Causey's lawyer tried to use in the trial of former WorldCom executive Bernie Ebbers is trying to force the government to immunize witnesses the defendants want to testify but who would otherwise invoke their Fifth Amendment right against self-incrimination.

This could include a dozen or more former Enron workers and David Duncan, the Arthur Andersen partner who headed up the firm's work for Enron. He withdrew his guilty plea but could still be prosecuted.

But the defense would need the judge to force prosecutors to immunize witnesses or promise not to prosecute them.

In some cases, with witnesses who left the company more than five years ago, the defense may ask the judge to rule that they have no Fifth Amendment rights left and must testify. Most relevant laws have a five-year limit, after which the government cannot charge someone, though someone still could have liability for 10 years for other crimes.

This could be dicey for the defense, because cross-examination of such witnesses by prosecutors could wind up hurting Lay and Skilling as much or more than the original testimony helped.

As for the government's case, it is not expected to depend on smoking-gun e-mail and videotapes that speak for themselves. Lawyers involved say the witness stand will be where the prosecution's case is either made or broken.

And no one is more anticipated in that chair than Fastow, the former CFO who pleaded guilty, faces 10 years in prison and has been credited with the theft that ignited the company's death spiral.

"Andrew Fastow is both a blessing and curse to the government," said Kent Schaffer, a Houston lawyer who often practices in federal courts. "He's the highest-up at Enron who can shed light on the workings, but he's also the most responsible for criminal acts."

Though Lay and Skilling are being charged with what amounts to lying about how much was in the Enron cookie jar, Fastow actually was caught with his hand in the cookie jar, and the jury will hear all about it. The government likely will try to corroborate what Fastow says, knowing he will come under siege.

The government must not just show what went wrong at Enron, but it has to connect it all to Lay and Skilling. It's likely it will try to do this mostly through its discussions with cooperating witnesses.

"Without access to what they said and what was said to them, it's hard to know where this will go. But the government must prove criminal intent. They have to show Lay and Skilling knew they were involved in fraudulent conduct," Frenkel said.

Mintz said the way to do that will be to contrast what was said behind closed doors at the company and what was said to shareholders and Wall Street.

"The test will be the conversations. Prosecutors need to clearly spell out a disconnect - between what was presented inside and what was said outside to the public," Mintz said.

In the past two Enron trials, the government, which has its reputation on the line here, too, showed it was willing to play hardball.

Keeping the jury interested In the Enron Broadband Services trial last year, it was revealed that an FBI agent tried to pressure witnesses' attorneys when it was clear these people might testify for the defense.

Also in that case, when it was revealed the government erred in thinking a video segment was played at an analyst conference, it didn't apologize for the mistake and appeared to try to blame it on the woman who made videotapes for Enron.

And the prosecution also is keeping at the ready a second Enron-dedicated grand jury, keeping alive a threat that there could be more indictments, something the Lay and Skilling attorneys have complained about mightily.

Prosecutors have said they estimate their direct examination of their witnesses will take less than five weeks. But because defendants often prove their case while cross-examining government witnesses, those witnesses likely will be on the stand for more than twice that length.

Through all that, the government especially will want to keep the jury awake, interested and connected. That didn't happen in the broadband case, which ended mostly in a mistrial.

"Prosecutors need to keep the jury interested. If the defense drags it out too much, if it all seems too complicated, a jury might think since they themselves didn't understand, that's enough for reasonable doubt about guilt," Hilder said.

AT LAST, THE BIG ONE

Who

"Defendants": Ex-Enron Chairman Ken Lay and ex-CEO Jeff Skilling

"Judge": U.S. District Judge Sim Lake

"Lead defense lawyers": Mike Ramsey and Daniel Petrocelli

"Lead prosecutors": Sean Berkowitz and Kathryn Ruemmler

What

"The case:" A possibly four-month-long federal criminal trial in which the government hopes to prove Enron's two top executives knew they were lying about the value of their company. The defendants hope to prove Enron was in good shape and only a few bad apples did anything wrong.

When

"Starting up:" Jury selection begins at 9 a.m. Monday. When that's finished, opening statements likely will begin Tuesday, and evidence presentation likely will begin Wednesday. The case will be tried Mondays through Thursdays.

Where

"The site:" The defendants wanted to be tried elsewhere, but it will be at the Bob Casey Federal Courthouse in downtown Houston.

Why

"Their roles:" Prosecutors allege these men who started and shaped Enron are criminally responsible for lies that led to its downfall, but the two accused disagree.

# APPENDIX BX

## *Scores of reporters - and a rapper; Media flock here for trial, but find little in the way of news on Day 1*

THE HOUSTON CHRONICLE
Tuesday, January 31, 2006
3 STAR EDITION
Section A, page 13

By Mike Tolson, Mark Babineck, Rhea Davis, Staff

For a day that was all but certain to see little in the way of real news - assuming you don't count a couple of goofy protesters and a fledgling rapper hawking his CD - Monday nevertheless arrived bearing a tingle of excitement for scores of reporters who have waited years to write the final chapter of the Enron saga.

Some queued up even before dawn outside the federal courthouse in downtown Houston, eager to nab one of a handful of courtroom spots for the first day of the fraud and conspiracy trial of Ken Lay and Jeff Skilling, the company's former chairman and his onetime CEO.

Among the fortunate few with a ringside seat for jury selection was Bethany McLean, whose article in Fortune magazine in March 2001 helped set off waves of scrutiny that ate away at Enron's shaky foundation.

The article, which challenged the basis for the company's high stock price, ultimately made her a heroic figure of sorts in the company's downfall - a role she insists is undeserved.

"The story took on an importance later that it did not deserve originally," McLean said during a break in proceedings. "Whether I wrote that story or not, Enron would have gone bankrupt, investors would have lost billions of dollars and thousands of people would have lost their jobs. I just picked up on an underlying skepticism. If you had told me then that the company would go under by the end of the year, I would have never believed it. I was as naive as the rest of us."

From book to film

McLean's interest in Enron continued over the years. Together with fellow Fortune writer Peter Elkind, she wrote a book on the company, "The Smartest Guys in the Room," which was made into a successful documentary film. She said she is looking forward to seeing the government's version of events that ended with the collapse of what was once the nation's seventh-largest company.

"It doesn't really change anything," McLean said. "It's not like people will get their jobs back or their retirement savings back. But I do think the trial is important. It will set a precedent of what's acceptable corporate conduct. Is it OK for executives to do anything so long as it's technically legal?"

McLean is the most visible of a modest corps of reporters who have followed the Enron story for the last five years, and most of which has assembled in Houston for its culminating act.

Joining in are writers for American news magazines, foreign journalists - France, Germany and Norway are represented - and a few from unexpected publications.

"I don't have any pretense of objectivity," said Matt Taibbi, a national affairs correspondent for Rolling Stone magazine who watched the selection process crawl along on closed-circuit TV in the overflow room half-filled with reporters pecking away on laptops. "I don't like people in general, so this is a natural. Lay and Skilling are two of the best modern villains. I think this trial will not be about personalities. It will be about money and American business."

It will also be complex, at times numbingly so because of Enron's arcane business model and accounting methods. Taibbi at least has the advantage of writing subjective accounts for the twice-monthly Rolling Stone. Translating trial testimony and exhibits into coherent nuggets of daily news will be more challenging.

"This one is way more complicated than any one of the other white-collar fraud cases," said Scott Cohn, senior correspondent for CNBC. "It's much more difficult to figure out exactly what the fraud was. In Tyco, you had the CEO looting the company. In WorldCom, they were moving expenses to another part of the ledger to beef up the balance sheet. In

Enron, however, you've got very aggressive and different accounting pushed to the edge."

How much public appetite there is for yet another tale of alleged corporate malfeasance is hard to judge. Elkind, however, said the interest is still there.

"The reason Enron still resonates so powerfully is because the whole company collapsed when only moments before it was a capable, vibrant company," Elkind said. "It was revealed as such a deception. That's why Enron hit people so hard. Here was this company, the most innovative in America, and it's in bankruptcy almost overnight. It was not just a few people fiddling with numbers. Rather, it was simply not what it was held out to be. It was a Potemkin village."

Worldwide interest

Public interest extends well beyond American shores, said Rob Lever, a Washington, D.C.-based business writer for Agence France-Presse.

"People around the world came to learn quickly about Enron and what it symbolized," Lever said. "It gave a lot of fuel to critics of the American system. Americans are supposed to be the leaders. People look up to us. When things are shown to be unseemly, that throws everything into doubt."

Monday dawned with a mix of journalists, lawyers, consultants, curiosity seekers and paid placeholders already lining up outside the main courthouse entrance, waiting for the limited number of spaces inside the courtroom.

Business wire service Bloomberg News was the most determined, placing two surrogates at the door at 6:30 p.m. Sunday. The overflow room was set up to handle the later-arriving media and any unseated members of the general public.

By 6:30 a.m., a half-hour before the building was set to open, the line stretched beyond the Rusk Street side of the building as TV crews set up for live shots on the morning news shows.

The involuntary stars of the trial arrived at the courthouse a few minutes apart, each flanked by his primary trial lawyer and accompanied by a small entourage.

First came Lay, around 8:30 a.m., who said little beyond that he was "looking forward" to getting his day in court. He was met by reporters and photographers before crossing Smith Street, and the media crush grew as mounted Houston police and federal marshals tried to direct traffic.

Skilling followed a short while later and was met by a similar scene, except that he and his group made a wrong turn and inadvertently walked into the media throng rather than the courthouse door.

They turned around near where two followers of fringe Democratic activist Lyndon LaRouche had set up a banner protesting Enron and the nomination of Samuel Alito to the U.S. Supreme Court.

The protesters weren't the only ones drawn to the media throng. David Tonsall, who worked at Enron for five years before he and more than 4,000 others were laid off when the company declared bankruptcy in December 2001, was handing reporters copies of his hip-hop compact disc, “Corporate America”.

“I hope they go to jail,” remarked Tonsall, who said he worked in the company’s gas pipeline business and now works for Anheuser-Busch. The rapper, who goes by the stage name N-Run, played a recording of his tunes to serenade Skilling as he crossed the street.

A couple of hecklers also made the scene, armed with a disposable camera. But not all the spectators were negative. One man held up a homemade sign proclaiming Lay’s innocence. Lee Perry said he audited the company in its heyday and found that everything was on the up and up.

“I’ve heard all the talk about what people think will happen,” said Perry, but he predicts the trial will exonerate the former Enron chairman.

# APPENDIX BY

## *Enron's philosophy of lies is what's on trial here*

THE HOUSTON CHRONICLE
Sunday, January 29, 2006
4 STAR EDITION
BUSINESS, page 1

By Loren Steffy, Staff

Ladies and gentlemen of the jury: If you are reading this, you shouldn't be.

And as Judge Sim Lake pointed out in his instructions to you on Monday, this isn't evidence.

But as this monumental legal proceeding gets under way, if I could pass on some advice, it would be as follows: The key to deciphering what happened is common sense.

That may sound like something the prosecution would say, but it's an important compass in finding your way through the fog that people often create to diffuse blame. In this case, it's the best tool for cutting through the shroud of complexity that hid Enron's sins.

In the coming weeks, as you decide the guilt or innocence of former Enron leaders Ken Lay and Jeff

Skilling, you will no doubt hear much about the intricate details of the company's business, about the serpentine partnership arrangements and about the arcane accounting used to prop up Enron's facade of success.

At its core, though, Enron is a story of slow decay, of a company consumed by its own hubris.

Few businesses tried harder to make wrong appear right.

Sometimes people are so smart they can fool themselves.

By 2001, Enron executives had used their hallucinogenic logic to do just that. Losses became profits, debts became assets, loans became revenues.

This trial is more significant than the corporate scandal cases that have preceded it.

Enron's failure was quickly eclipsed by WorldCom's, but WorldCom's fraud was simple and blatant.

Enron was a complicated lie of conceit, a methodical descent into malfeasance.

Need for immediacy

It wasn't enough for Enron executives to create new markets for natural gas or electricity. They had to be profitable immediately.

Water, broadband, pollution controls - they all may have someday lived up to Enron's hype, but success had to be instantaneous.

And it could be, as long as everyone believed that rules that appeared to broken were merely bent, and that bending rules was the same as complying with them.

The outcome was decided, and then the numbers were moved around until they all appeared to fall in place. Success was assured as long as the stock kept rising, and the stock would rise as long as Wall Street saw the numbers it wanted to see.

Flouting the rules

Ladies and gentlemen, you now begin the process of deciding the fate of two men who were once masters of this twisted universe.

Last month (SEE CORRECTION), Lay gave a speech in which he said this trial will be about far more than him and Skilling. Everything that Enron stood for, he said, is on trial.

It's one of the few points on which he and I agree.

Enron stood for a philosophy that said rules are malleable, that ends justify means no matter how ridiculous, that investors are easy marks to be fleeced and employees are pawns to be manipulated.

Lay and Skilling had no qualms about distorting the success of Enron's ventures or touting its stock when it suited them.

Clinging to delusions

You will have to decide if those actions constituted a crime or simply incredibly poor business judgment.

As you make that decision, do not be drawn in by the circular arguments and seductive logic.

It's worth remembering the words of E.B. White: "A good many of the special words of business seem designed more to express the user's dreams than to express his precise meaning."

In the end, Enron's dreams were delusions.

Lay and Skilling cling to those delusions still.

Their defense is predicated on it. They would have you believe the failure of the country's seventh-largest company was unfortunate happenstance, brought on by a "run on the bank."

It was all someone else's fault. Blame those ignorant hordes of the market who, like all Enron doubters, just didn't "get it."

We "got it," all right.

No fluke

Companies as big as Enron don't fail by a fluke. If Enron had its foundation in truth, no "run on the bank" could have destroyed it.

The market's lack of confidence merely reflected the larger ruse.

In the coming months, you will be asked to pluck the petals of truth from the field of lies, to decide if the failure and deceit constituted criminality.

The touchstone for sorting honesty from deception, ladies and gentlemen, is common sense. May you have it in abundance and apply it liberally.

## APPENDIX BZ

### *Show of force at city's expense; Extra officers are assigned to maintain order at high-profile case*

THE HOUSTON CHRONICLE
Thursday, February 2, 2006
2 STAR EDITION
Section A, page 9

By Mark Babineck, Staff

Former Enron leaders Ken Lay and Jeff Skilling may have set aside an estimated $38 million for their criminal defense, but the city will pick up the tab when it comes to getting them across Smith Street safely.

Unlike departments in other cities that have hosted major white-collar criminal trials recently, Houston is assigning officers to the media crowd outside the federal courthouse during the Enron fraud and conspiracy trial, officials said Wednesday.

"The added officers are assigned on-duty due to the high-profile nature of the trial, and officers are primarily providing crowd control, directing traffic and being visible for general order and security purposes," Houston police Capt. Mary Lentschke said.

14 officers spotted

Photographers said they spotted as many as 14 officers on site simultaneously Tuesday, when lawyers were delivering opening statements in the trial expected to last four months or more.

By Wednesday morning, four officers on foot and two on horseback helped Lay, Skilling and their entourages make the trek from the Bank of America Center to the federal courthouse.

By the afternoon, it took just two mounted patrol and two on foot to make the trip. Houston police Sgt. Michelle Sandoval said staffing decisions will be made as the courthouse crowd ebbs and flows during the trial, which could last four months or more.

About an hour after the defendants left for the day, leadoff witness Mark Koenig walked out the door and straight through a bevy of photographers to a waiting limo, all without benefit of police escort.

Officials at other city police departments seemed surprised by Houston's show of force.

"We didn't have to deploy anything," Birmingham, Ala., police Lt. Henry Irby said, referring to the fraud trial of HealthSouth Corp. founder Richard Scrushy last year. "They had their own security."

New York's policy

New York, which has seen its share of white-collar trials in recent years, does not specifically assign officers to shield criminal defendants from photographers and reporters, Detective Kevin Czartoryski said.

"That has nothing to do with police officers," he said, adding that New York police may be sent for crowd control in those situations.

Houston police at the courthouse have told photographers they're there to protect the media as much as anyone. During one exchange Wednesday morning, police escorted the defendants through the throng mindful to keep the horses from blocking photographers' shots, then asked afterward if everyone got their picture.

"Our goal is maintaining order, and since it is such a high-profile case, that's why there are extra officers out there," Sandoval said.

All police working the trial are on their regular shifts and are not on overtime or being paid by a third party, police said.

The crowd on Rusk Street is almost entirely made up of journalists, with occasional curiosity seekers and passers-by mingling in. A smattering of protesters have stopped by briefly, mostly on Monday, and every now and then a motorist shouts choice words directed at the defendants or the press gaggle.

# APPENDIX CA

## STYLE AT THE TRIAL; Court appearance; Enron defendants, prosecutors fashion conservative attire

THE HOUSTON CHRONICLE
Sunday, January 29, 2006
4 STAR EDITION
Section A, page 1

By Clifford Pugh, Staff

First glance into U.S. District Judge Sim Lake's courtroom at the start of the Enron trial: There are sooooo many dark suits that it looks like a funeral is about to begin.

In the early days of the biggest trial to hit Houston in years, the dress code is noticeably nondescript. No doublebreasted suits. No handkerchiefs in the front pocket. No black trench coats. No oversize Rolexes or pinky rings. The only jewelry: simple wedding bands.

During Tuesday's opening arguments, the most stylishly dressed people were in the jury box. One female juror with closely cropped hair looked fashionable in a black turtleneck and tan blazer. A male juror was in a brown argyle sweater, and other jurors in plum, rose and light green brightened the drab courtroom.

Note to prosecutors and the defense team:

This is a jury that cares about appearances.

Vogue magazine will likely never do a spread on "courthouse chic." Even so, what defendants, their families and attorneys on both sides of any important case wear can send subtle signals to the jury and even affect a trial's outcome, according to experts.

"Greed is one of the things this trial is about. You don't want to play into that image," says Howard Varinsky, a veteran jury consultant who advised prosecutors of Martha Stewart and Scott Peterson. "You don't want to create disbelief, but you want to get rid of the flash - the 'rich whitepeople's bling.' You want to reek of 'class' and not 'slick.'"

Appearing daily in a dark business suit, with a light blue shirt and red tie, defendant Kenneth Lay is dressing for the courtroom in much the same way he did for the Enron boardroom when he headed the one-time energy giant. (Our only advice: Get a haircut. Lay's wispy hair sticks out in back in all the wrong places.)

Wearing dark pants outfits during the first two days of the trial, Lay's wife, Linda, seemed almost invisible. She brightened up a bit Wednesday in a pale-blue jacket worn with black slacks.

The Lays' look is affluent - their clothes obviously did not come from Wal-Mart - but not overly ostentatious.

"I think they're consciously being conservative, but they're being themselves," says Helen Perry, a Houston image consultant who taught Enron employees how to dress for success in 1999. "They're very classic. They look like old money, which they are."

In Perry's view, former Enron CEO Jeffrey Skilling, who is charged with 31 counts of conspiracy, fraud and insider trading, has had more of a makeover. She believes he was wise to trim "that little flip off the back of his hair" before the trial. It communicated a more rebellious attitude; now he takes on more of a "choirboy" demeanor.

She also finds it odd that Skilling wore a green tie on the day of jury selection, because the color is associated with money - something Enron defendants might not want the jury to dwell on. "It's not your typical power tie," she says.

During opening arguments, Skilling was supported by both his wife, Rebecca Carter, and exwife, Sue Skilling. Both wore somber, two-piece outfits that looked expensive though not couture.

Sartorially speaking, Enron task force prosecutor John Hueston took a different tack. An American-flag pin was on prominent display in the lapel of his navy suit when he told jurors, "We represent the United States of America." The pin subliminally reinforced Hueston's contention that he was on the side of truth, justice and the American way.

As in most high-profile cases, the defense team's suits looked nicer than those of government prosecutors who don't rake in the big bucks. Skilling's lawyer, Dan Petrocelli, has another advantage: He has a head of hair that most middleaged men would kill for.

But does it matter what the lawyers wear? Probably not. While jurors note how defendantsdress, in most post-trial surveys they say they don't much care about how the lawyers look.

"You see attorneys dress like Columbo and attorneys that reek of money and success. Neither matter," Varinsky says. "Jurors look past that. What they care about is the professionalism of the lawyer."

With the Enron trial barely under way, there's plenty of time left for fashion blunders.

Houston courthouse observers recall that former Playboy playmate Anna Nicole Smith dressed conservatively at the start of her probate fight in 2001 to secure a chunk of her late husband's fortune. But as the trial progressed, her courtroom wardrobe grew more eye-catching.

And when she had a meltdown on the stand in a celebrated confrontation with lawyer Rusty Hardin a few months later, she was wearing a pink top emblazoned with the word "Spoiled." The encounter effectively sealed her fate; the jury awarded her nothing.

Yet Smith will get another day in court when her probate case is argued before the U.S. Supreme Court Feb. 28. Observers are already wondering what she will wear.

Perry's red-letter day at the Enron trial willcome when Andrew Fastow testifies. Of all the Enron principals, she believes the disgraced executive wins the prize for sartorial excellence.

"He must be a perfect 42 or 44 long, with saltand-pepper hair and chiseled features. He could be GQ-perfect," she says. "But taste in sartorial splendor has never been a shortcoming on the part of Enron executives. It would be a shame to trade in all those great threads for prison garb. But then, the whole thing's a shame, isn't it?"

COURT FASHION WONDERS & BLUNDERS

ANNA NICOLE SMITH - The former Guess model donned a pale-pink top beaded with the word "Spoiled" when she testified at the probate trial of her late husband's estate on Valentines Day, 2001

WINONA RYDER - The actress looked demure and ladylike for her 2002 trial with a wardrobe that included chic yet conservative coatdresses. Even so, she was convicted of shoplifting

JACK ABRAMOFF (below) - After pleading guilty last month to bribery, the lobbyist resembled a mob boss in a tight black trench coat and black fedora

LIL' KIM (left) - The rapper toned down her flamboyant style during her trial last year. But she still looked too casual for the courtroom. She is serving a year in prison for lying to investigators about a 2001 shooting

COURTNEY LOVE - After pleading guilty to being under the influence of cocaine in 2004, the rock singer resembled a bag lady in an ill-fitting cardigan and disheveled hair

MICHAEL JACKSON - The self-proclaimed king of pop showed up at his child-molestation trial last year in bright vests and more medals than a minor royal. One day, he even wore pajamas

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MARTHA STEWART - One expensive bag wasn't enough. The home-design guru carried both an expensive Hermès Birkin handbag and an Hermès Garden Party handbag to court during her 2004 trial for lying to investigators about a stock sale

# APPENDIX CB

## *THE ENRON TRIAL; Interest collapses much like Enron itself; Once the center of media attention, the company's fall is now old news*

THE HOUSTON CHRONICLE
Tuesday, February 7, 2006
3 STAR EDITION
Section A, page 8

By Mike Tolson, Staff

At the time, it was the biggest business collapse in American history. But that time, of course, was five years ago.

Now Enron is an afterthought to much of the public. Once the belle of the corporate scandal ball, it has a hard time getting any buzz these days. Even the long-awaited criminal trial of its top honchos, Ken Lay and Jeff Skilling, is failing to find much traction in the national news media.

After a ruffle of first-day interest, when the only actual news was the seating of a jury, the start of testimony has been met with a barely stifled yawn.

The Wall Street Journal, which broke considerable ground during the unfolding scandal in 2001, buried its report of kickoff witness Mark Koenig on page C6, right next to a six-paragraph piece on the contract extension granted to the CEO of Deutsche Bank.

The Chicago Tribune and the Los Angeles Times relegated Koenig's claims that Lay and Skilling hid company debt to mislead the investment community to the third page of their business sections.

Only the New York Times showed much enthusiasm for the subject, placing the story on the bottom of its business section front. Predictably, Friday's follow-up slid into the section's inside pages.

Finding the latest Enron news online took a bit more work. The New York Times' first story on Koenig's testimony is absent any link from the front page. Web readers must scroll down to the 11th article on the business page.

Ditto the Los Angeles Times, whose readers had to zip past the front page to the business section, where the Enron trial was squeezed in between accounts of earnings reports from Boeing and Time Warner. CNN's site exiled coverage to the page handled by online partner Fortune Magazine.

The popular and literate Web site Salon.com, once a chronicler of Enron's dirty laundry, has gone silent on the subject save for the offerings of its news wires. In fairness, Slate, another popular Web-only outlet, did offer the perspective of its business columnist, Daniel Gross, who did not need to come to the federal courtroom in downtown Houston to opine that the defendants' opening statements were a bunch of hooey.

'Fatigue factor' figures in

It's a far cry from the early days, when news organizations tried to outdo each other with tales of corporate excess, outlandish accounting and sudden joblessness. Today, with pretty much everything having been said, Enron has slipped into the realm of oxymoron: old news.

"I think there is a fatigue factor, no doubt about that," said Garth Jowett, communications professor at the University of Houston. "Everybody is waiting for things to heat up. What constitutes heating up, I don't know, except for the testimony of the two individuals perhaps. You can't hide the fact that all the details have come out over the last three years. There is nothing new. These guys have been hammered. People think they know what they need to know to have an opinion."

Accounting scandals can kill a company - in this case two, counting Arthur Andersen - but they don't leave much of a corpus delicti.

The titillation factor is low. The tabloids are noticeably absent. Don't expect a visit from Geraldo.

"This isn't O.J. Simpson," Jowett said. "There's no murder, no blood on anyone's hands. This has all been played out in the press, and now we're at the denouement, and it's pretty dull."

That may change when Lay and Skilling testify. Perhaps the testimony of former chief financial officer Andy Fastow will spur a little excitement. For the most part, however, it will be trial as usual, with a courtroom less than full and an overflow media room where reporters have plenty of space to stretch their legs - or to set up cots and kitchens if permitted.

The much-ballyhooed blogosphere has barely weighed in on the opening of the trial.

The Truth Laid Bear, a Web log monitor, confirms that Enron cannot qualify as anything close to a hot topic, notwithstanding periodic mention by local blogs such as blogHouston, Houston's Clear Thinkers and Slampo's Place, the latter of which offered readers what may prove to be an appropriate invocation to a trial struggling to make its mark in the competitive world of current events:

"Friends, as we gather here today to pass judgment on these two once-glib sons of the Great Midwest, let us resolve to never, ever forget the bitter lesson of Enron. And the lesson of Enron is, of course ... is ... um wait, it'll come to us ... the lesson was ... hold on ... lessee ... lesson ... Enron ... uh ...."

# APPENDIX CC

## *THE ENRON TRIAL; Ethicists see perils in fixation on stock; Tying price to compensation, as energy giant did, poses problems, outsiders advise*

THE HOUSTON CHRONICLE
Tuesday, February 21, 2006
3 STAR EDITION
Section A, page 1

By John C. Roper, Staff

Simply arriving at work was probably enough for most Enron employees to be reminded of what was of utmost importance to top executives there.

Stock tickers were in the lobby, most of the elevators and on top of the credenza behind CEO Jeff Skilling's desk where employees summoned to his office could see the value of Enron's stock "live" as it ebbed and flowed with the market.

"Almost everywhere you went in the Enron building you were exposed to the stock price," former Enron executive Ken Rice testified last week in the trial of his former bosses, Skilling and former Chairman Ken Lay.

Workers were even bombarded with a stock ticker as they entered the Enron building from the garage, said Rice, the former head of Enron's

Internet unit and a key witness for the government who has pleaded guilty to securities fraud.

In many ways, the ongoing trial is about Enron stock and whether Skilling and Lay were behind a conspiracy to drive up its value.

Defense attorneys argue that the two men were hard-driving innovators doing what all corporate executives are supposed to do: make money for shareholders.

Regardless, experts believe that corporate executives who use a stock-price-at-any-cost mentality can create a culture that is ripe for breaches of ethics and even fraud - whether CEOs are orchestrating it or not.

"If you have a CEO who is motivated because of an option plan or a bonus plan to promote his stock, if he has the kind of personality that measures performance by the selling price of the stock, he's going to lead his board, his company and his shareholders down a very slippery slope," said Arthur Levitt, former head of the Securities and Exchange Commission and previously a chairman of the American Stock Exchange.

Levitt believes the stock-ticker mentality poses an especially big problem when compensation is tied to stock options - as it was for Enron's executives.

"If you compensate a CEO by giving him options, he's going to do everything he can to make those options as valuable as possible," Levitt said.

Earnings pressure

Prosecutors allege Enron executives in part hyped the company to pump up the stock price or used insider information so they could profit personally.

Rice, for example, acknowledged selling millions of dollars of shares after learning Skilling planned to resign, knowing that the stock price would drop when Wall Street heard the news.

Much of the testimony given by government witnesses so far has focused on the extreme pressures at Enron and its divisions to meet earnings targets to please Wall Street.

Mark Koenig, the former head of investor relations at the company, testified that earnings numbers were twice fudged by one and two pennies to match or beat Wall Street expectations.

Rice, once a protegé of Skilling's, told jurors that Enron Broadband Services lied to investors about the capabilities of the division out of the same fears.

Consequently, Enron saw a surge in stock price after each time it fudged its earnings.

"When people ask me what the leading cause was when they talk about what happened at companies like Enron or Tyco, I always tell them the focus on elevated stock price in the short term to me is the greatest contributor to this kind of behavior," said Jeff Salters of the International Business Ethics Institute, a nonprofit group based in Washington, D.C.

Salters said that can result in employees creating shortcuts or violating codes of conduct because such cultures reward employees for reaching stock-based goals but rarely evaluate the way they reach them.

Ethicists say there's nothing wrong with a business wanting to increase its stock price - it's what investors want, too - but it needs to be done with openness and integrity.

"To the extent that the stock price becomes the sole value guiding an organization, then everything else becomes a means to that end," said Margaret Cording, assistant professor of management at Rice University, whose specialty is business ethics.

Cording said the checks and balances are different for organizations that have a more long-term approach.

In corporate-speak, that's part of good governance.

Gavin Anderson, CEO of GovernanceMetrics International, which rates governance practices of companies and ties their scores to investment risk, said poor governance can be linked directly to fraud.

"All the implosions and crises that we had in this country in the last few years - Enron, WorldCom, Adelphia, Global Crossing - they were all corporate governance failures before they got to fraud," Anderson said.

His company is among those that work to evaluate the quality of a company's governance by understanding its culture. Doing so, he said, can reveal whether that culture is more likely to lead to fraud and in turn be a bad investment choice.

Malcolm Salter, a professor at Harvard Business School who has penned several books looking at corporate America and corporate culture, agrees.

"It's just a joke when you have a ticker tape going around when that time period of measurement is minutes and days when the strategy of the business should be years," Salter said.

Levitt, now a senior adviser for the Carlyle Group, a large private equity firm, agrees.

"From my own personal experience the best CEOs that I have ever known are the ones that don't care very much about the day-to-day fluctuations of their shares," Levitt said.

Companies run by CEOs who make decisions based on how they will affect today's stock price "I wouldn't touch with a 10-foot pole," he said.

"The best companies, the most solidly managed companies, are ones that are managed for the future that don't focus on the price of the shares," Levitt said.

Levitt believes more companies today are taking the long-term view than they did in the 1990s.

And there's some evidence a trend may be beginning.

When Internet search giant Google announced its fourth-quarter earnings earlier this month for the first time, it came up short of Wall Street expectations.

Google CEO Eric Schmidt shocked analysts by shrugging it off.

"We take the long-term view," he told them.

Ford Motor Co. has taken it a step further.

Key statistic gone

Late last year, the company decided to no longer publish quarterly earnings guidance, which analysts use to estimate a company's potential. Last month, Bill Ford, the company's chairman and CEO, told analysts Ford would no longer publish annual guidance, either.

"We must be guided by our long-term goals of building brand, satisfying customers, developing products and accelerating innovations," Ford said on Jan. 23, when announcing the decision.

Cording said those moves set the right tone to employees.

"That kind of leadership sends a powerful signal that meeting your earnings target is not the be-all and end-all for this firm and that there are limits," she said.

...

EXTRADITION CASE

Two British judges are set to rule today in London in a long-running case involving three former NatWest bankers who are fighting extradition to the United States over Enron-related fraud charges. The former bankers - David Bermingham, Giles Darby and Gary Mulgrew - are appealing British Home Secretary Charles Clarke's decision to allow their extradition to face trial in the U.S.

# APPENDIX CD

## *THE ENRON TRIAL; Testimony is potentially damaging to Skilling, Lay; Ex-CEO of two units says Enron deliberately kept risk, loss out of the public's view*

THE HOUSTON CHRONICLE
Wednesday, March 1, 2006
3 STAR EDITION
Section A, page 1

By Mary Flood, Staff

A former top-level Enron executive testified Tuesday that company officials played fast and loose with the rules at Enron, misusing reserves to fool investors, moving losses to hide them from the public and pretending the business wasn't a big trading house because the truth would hurt the stock price.

David Delainey, former CEO of both Enron's troubled retail division and its profit-generating North American trading unit, gave testimony that was potentially damaging to both Jeff Skilling, who kept him in his inner circle, and to a lesser degree Ken Lay.

When Skilling left Enron as its CEO abruptly in August 2001, Delainey was one of the names being bandied about as a possible successor.

He spent much of the day being questioned by prosecutor Kathryn Ruemmler. Defense attorneys have not yet had their chance to cross-examine the 40-year-old Canadian who was at Enron from 1994 through 2002.

Delainey had a view from the top of what he described as a money-driven culture where telling the "Enron story" involved occasionally lying and cheating. Before he pleaded guilty to one count of insider trading in 2003, Delainey said, he wasn't "candid" with the government because he was "wound up in the Enron story ... and denial of what was happening there."

He forfeited about $8 million to the government and admitted that he participated in schemes to manipulate finances and make material misrepresentations to the public.

'Making tons of money'

Delainey became CEO of the profit-generating Enron North America unit of the wholesale trading division in 2000. It was there, after his traders made wild profits speculating on energy prices during the California crisis, that they had so many profits they didn't quite know what to do with them.

"We were making tons of money. We were knocking the cover off the ball," he said of the second quarter of 2000.

He said Skilling even gave him a hug when he told him about the vast quantities of cash they were piling up. But he said they did not want to show the world those profits because it would show how much risk they were taking.

Delainey said holding back hundreds of millions in reserves was a way to smooth the volatility that would cue analysts to downgrade the stock.

"It's not legitimate. It's cheating and misrepresenting the actual profitability of the company," he said of the manipulations. But he said it was "standard operating procedure at Enron. We'd done it before ... at Enron in Houston, we tended to be pretty fast and loose with the rules."

He told the jury that no company official wanted to admit Enron's profits were mostly from trading.

"Having to admit we were a very large trader, and frankly a good one, would put significant pressure on Enron's stock because the investment community does not put a significant multiple on trading revenues," he said.

The jury has repeatedly heard Skilling and Lay, the company's former chairman, stress that Enron was not a trading company but a logistics company. Delainey said that was not the case.

After running the North American trading section, Delainey was moved in early 2001 to run the troubled retail division he called a "basket case." But he said fixing it without letting the public know what a financial mess it was would be like "retooling an airplane in flight."

He said they didn't let the public know. Instead both Skilling and Lay told outsiders and even employees the retail division was a growing business.

But Delainey said when he looked under the hood at the retail division, also known as Enron Energy

Services, he found badly written contracts, bad billing procedures, general disarray and about $1 billion in losses or potential losses.

Delainey said he came up with the idea in the spring of 2001 to hide losses from the retail division by moving the troubled contracts and the risk on them to the profit-making trading unit where he once worked.

'Cold feet'

But by the time of a March 29, 2001, meeting with Skilling and other top executives, Delainey got "cold feet" about his plan to keep investors from seeing the immediate problem of a $200 million loss suffered because of a California utility rate hike that affected retail contracts.

He told Skilling and the others that moving part of retail to the trading division "lacked integrity." That elicited an angry response from some executives, he said. Delainey said Skilling "looked at me and said, 'What do you want to do?'" Delainey said he took that to mean "get in line" and help hide the losses.

Skilling and Lay lawyers have argued with other witnesses that the shift was for efficiency's sake but Delainey's testimony could be more devastating since he was in on the decision making.

Delainey also was potentially damaging to Lay when he testified Lay told him he saw a late August 2001 memo from recently laid-off employee Margaret Ceconi. She sent her angry, sometimes rambling missive to Lay and the board secretary warning of fraud in hiding retail losses by moving them to make retail appear profitable.

The government hopes to show Lay was aware of the problems at Enron, in some part because he was warned in this Ceconi memo and the earlier August message from vice president Sherron Watkins warning of an impending accounting scandal. Lay's lawyers have argued that others vetted Watkins' memo and they have made it appear that Lay never saw the Ceconi warning.

Delainey is scheduled to be cross-examined today after the defense cross-examines Timothy Belden, a former Enron trader who also gave his direct testimony Tuesday.

Belden pleaded guilty in October 2002 to conspiracy to commit wire fraud in connection with manipulating energy prices in California. He testified about speculative trading during the California and West Coast energy crisis.

"The money that we made was completely dependent on whether the prices went up or down," he explained of the volatile time of unprecedented energy prices. "Chaos drove the high prices and the high prices drove our profits."

# APPENDIX CE

*Good ol' Grandma Millie may yet get the last laugh*

THE HOUSTON CHRONICLE
Friday, March 3, 2006
2 STAR EDITION
BUSINESS, page 1

By Loren Steffy, Staff

Somewhere, Grandma Millie is smiling. Perhaps, even a vindictive little chuckle escapes her lips. It's OK. Under the circumstances, she's entitled.

Grandma Millie is, of course, the fictional California widow left in the dark by Enron's gaming of the California electricity market in 2000.

Enron traders laughed about "stealing" money from her by charging $250 a megawatt-hour for power.

This week, the ghost of Grandma Millie hovered over the trial of former top Enron executives Ken Lay and Jeff Skilling.

Enron's power trading business was at the forefront as prosecution witness Dave Delainey took the stand. His testimony shows why Grandma Millie may yet get the last laugh.

Delainey testified that, as head of Enron Energy Services, the company's retail electric business, he oversaw the transfer of losses from the division to Enron's profitable wholesale trading operation.

Enron used the transfers to mask losses because it wanted investors to think that retail was a burgeoning and profitable new business.

In a March 29, 2001, meeting with top company executives, Delainey said he began to have second thoughts about Enron's accounting games. He said he got "cold feet," drawing the ire of Skilling and other top executives.

The problem was that EES was facing what appeared to be a $200 million loss because of a new surcharge that the California Public Utility Commission enacted a few days earlier.

The increase meant that what was going to be a $40 million profit was about to become a $140 million loss, Delainey said.

The charge kicked in just days before the end of Enron's first quarter, and executives were scrambling to find a rug under which they could quickly sweep the loss.

Focus on profit

Delainey claims Skilling bullied him into going along with the plan.

Skilling's lawyers attempted to paint Delainey as a skilled liar who's trying to save his own skin by saying whatever prosecutors want him to say.

Under cross-examination, Skilling's lawyer, Dan Petrocelli, produced an e-mail dated April 20 -

almost a month after the March meeting - from a group of Enron accountants and risk managers that showed the loss may not have been as much as $200 million.

Under one scenario, it might have left the division with a profit of a few million dollars.

Petrocelli argued that this meant there was no fraud.

The idea that if there was no loss there was no fraud speaks to the fundamental problem at Enron.

Profit, regardless of how it was derived, was all that mattered.

Prosecutors, by the way, later produced a document that reflected a $225 million loss from the surcharge.

A convoluted system

The irony, though, is that after everything California went through - rolling blackouts, supply shortages, soaring electric costs, millions of dollars in lost business - it struck back and probably didn't even know it.

California, after all, proved to be generally clueless about deregulation. It adopted such a convoluted system that it practically invited predatory practices by Enron and other companies.

Using schemes such as Fat Boy, in which Enron overstated demand for electricity; Death Star, in which it faked transmission congestion then collected a fee for alleviating it; and Get Shorty, in which it sold power that it didn't have, Enron exploited the system in California for hundreds of millions of dollar through loopholes in its flawed system.

Bad public policy, though, doesn't justify victimization.

Damaging testimony

Make no mistake, the $200 million in surcharges did little to offset the billions of dollars Enron made - much of it legally - off California's energy crisis. In 2000 alone, Enron's trading operations made some $2.2 billion in profit, a good chunk of which came from profits derived from California.

But the surcharge created the imminent loss at EES, which in turn prompted Enron to shuffle them off to another division where they could be absorbed unnoticed into trading profits.

To justify the transfer, Enron also reassigned people and assets from EES to its Enron North America trading unit. The change, though, didn't take place until late April or early May of 2001, about a month after the end of the first quarter.

The maneuvers are now key pieces of evidence in the Enron trial. At the very least, it has evoked some damaging testimony against Lay and Skilling this week.

And if the pair is convicted, then that 3-cent-a-kilowatt-hour surcharge may prove to be one of the deals that puts them away.

Call it Grandma Millie's revenge.

# APPENDIX CF

## *Straight from the horse's mouth*

THE HOUSTON CHRONICLE
Wednesday, March 8, 2006
3 STAR EDITION
BUSINESS, page 1

By Loren Steffy, Staff

We've been waiting a long time for this.

For more than four years, we've waited for Andrew Fastow, under oath, to tell what he did at Enron and why.

Tuesday morning, it began, and Fastow didn't disappoint.

The "why" was simple: greed.

"I was opportunistic," he said more than once.

As for the "what," it unfolded in a full day of testimony. Fastow ran through deal after deal, partnership after partnership. They are, by now, names familiar to anyone who's followed Enron's demise: Raptor, RADR, Chewco, LJM.

Fastow didn't surprise so much as confirm. We've heard all this before, and yet, there was something stunning in hearing it from the man who engineered it all.

Whether you believe Ken Lay and Jeff Skilling are innocent or guilty, whether you believe Enron was a house of cards or a victim of a "perfect storm" in the market, you probably believe Andy Fastow is at least partially to blame.

He's the universal fall guy in this story, a convenient scapegoat for the defense, an insightful patsy for the prosecution.

Lay and Skilling have structured their defense around demonizing him. He stole from the company, which undermined the market's confidence in Enron's finances. He was, as Lay attorney Mike Ramsey said during opening arguments, a "pitiful guy" and a "crook."

Last-ditch resort

Listening to hour upon hour of Fastow's financial exploits, it becomes clear how thin a defense that is.

Crook or not, Enron's financial need for Fastow's deals was too desperate for the two top executives to not understand their purpose. They were not normal business transactions, they were last-ditch maneuvers to prop up the charade that was Enron's accounting.

"Andy stole crumbs," Ramsey said. True enough, but as he did so he helped Enron hide a smorgasbord of debt and losses from investors.

Nothing Fastow has said so far offers new insight or answers for Enron's victims. The most glaring revelation - that Fastow said he lied to his wife and caused her to file the false tax return that sent her to prison in 2004 - speaks only to Fastow's personal sins, not the larger transgressions of Enron.

His testimony, which hasn't been subjected to the defense's cross-examination, simply reinforces the point that despite his arrogance, greed and craftiness, Fastow couldn't have engineered Enron's financial schemes by himself.

The Raptor transactions, which basically used Enron's own stock as a hedge to inflate earnings, were approved by the management committee and, in some cases, the board of directors, he said.

The LJM entities, which Fastow ran while still serving as Enron's chief financial officer, raised some $400 million in capital with which Fastow agreed to buy flagging assets from Enron.

The deals helped the company and enriched him personally, which, he said, neither management nor the board seemed to have a problem with.

"I thought I was being a hero for Enron," he said. " It would help Enron make its numbers, and if Enron made its numbers, its stock would go up. I was a big stockholder. If I help Enron make its numbers, I get a bigger bonus. At the time, it looked like I was helping myself and helping Enron."

No other company would buy the assets, most of which were declining in value or losing money, Fastow said. He agreed to buy them only because Enron agreed to pay him fees and guarantee him a return.

"I considered there to be almost no risk to me," Fastow said. "I thought it was pretty much pure upside."

Skilling so liked using the partnerships to inflate earnings that he commanded Fastow to "get me as much of that juice as you can," Fastow testified. "We were using the equity to juice the earnings, to increase the earnings of Enron Corp., so we could report the numbers we wanted to report."

Fastow acknowledged that on some deals, he further enriched himself by skimming money and lying to the company, one final deception in a lengthy chain of corporate deceit.

Taking care of business

If Enron's management had known about the thefts, though, what would it have done? It wasn't about to stop Fastow's shenanigans because, as he said, he was solving a problem.

He was taking Enron's garbage, and Enron was paying him handsomely for it.

"At Enron the culture was - and the business practice seemed to be - to do transactions that maximized the financial reporting as opposed to doing transactions that actually maximized value," Fastow said. "They were paying money to be able to report higher earnings."

Statements like that aren't anything new, but we've waited a long time to hear them said.

# APPENDIX CG

## *Enron's dark heart; Testimony by former chief financial officer paints chilling picture of an outlaw corporation.*

THE HOUSTON CHRONICLE
Friday, March 10, 2006
3 STAR EDITION
Section B, page 10

By Staff

Former Enron Chief Financial Officer Andrew Fastow is an admitted conspirator who pocketed millions of dollars from fraudulent financial manipulations. He faces 10 years in prison, and his credibility is certainly open to question. However, he is but one of a line of ex-Enron executives testifying in the trial of former CEOs Jeff Skilling and Ken Lay. Their common theme of "blinded by greed" is cumulatively persuasive.

The witnesses might not provide conclusive evidence against Skilling and Lay. But they have knocked big holes in the premise that Enron was an honest business at its core and was brought down by the actions of a few rotten apples led by Fastow. Judging by the number of former Enron officials who have owned up to criminal actions, a culture of management corruption seems a better description.

The notion that most of the executives who pleaded guilty are innocent victims of prosecutorial misconduct gets harder to believe as the procession to the witness chair goes on and on. Far more plausible is the explanation offered by Paula Rieker, the former managing director of investor relations. She testified that she deliberately blinded herself to the misrepresentations of Enron's financial health in order to play "the role of being a good corporate citizen." Likewise David Delainey, who headed several corporate divisions, testified that the world of Enron was motivated by money and lubricated by lying and cheating.

The testimony of the graying, 44-year-old Fastow was particularly riveting, as he had not previously spoken publicly about his role in Enron's downfall. Fastow admitted he had used his wife and children as conduits for cash disguised as gifts from a subordinate, Michael Kopper, and Kopper's domestic partner. In setting up a series of sham investor entities that allowed the corporation to disguise liabilities and bolster its earnings statements, the disgraced executive claimed to be carrying out the wishes of Skilling and other top executives, performing the role of a company hero.

Fastow testified that, rather than being alarmed by his self-dealing partnerships, Skilling encouraged him, saying, "get me as much of that juice as you can." Fastow also offered accounts of conversations in which Lay was informed of the company's collapsing finances before the CEO issued optimistic assessments to analysts and employees.

Known for his arrogance during Enron's heyday, Fastow became teary-eyed when admitting he had let his wife, Lea, plead guilty and go to jail for an income tax violation for which he was responsible. Given Fastow's admitted moral lapses, the jury might have difficulty believing his testimony that Skilling and Lay were aware of his financial maneuvers and Enron's faltering financial condition.

If the government cannot provide documentary evidence to corroborate the testimony of admitted felons, it will be hard to make the case beyond a reasonable doubt that Skilling and Lay are guilty. But the testimony has clearly established that Enron, rather than being a corporate Camelot done in by a few bad actors, had become a hothouse of white collar deceit and greed.

# APPENDIX CH

## *Lay right about one thing: No one heard so many lies*

THE HOUSTON CHRONICLE
Friday, March 24, 2006
2 STAR EDITION
BUSINESS, page 1

By Loren Steffy, Staff

Ken Lay was angry after court on Wednesday.

"I've never heard so many lies in one day in my life," he said.

Prosecutors couldn't have summed up their case against him any better as it reached its crescendo this week.

Former Enron Treasurer Ben Glisan Jr., in one day of testimony, recounted lie after lie after lie that he said Lay and co-defendant Jeff Skilling perpetuated while running Enron. He told of meeting after meeting, discussion after discussion in which the two fallen executives directed Enron's financial schemes.

The government has a handful of remaining witnesses, but Glisan's testimony is the bang on which its case rests.

Lay's anger is a telling barometer of how effective that testimony has been. When a government witness does well, Lay's attorney, Mike Ramsey, resorts to insults.

After former corporate secretary Paula Rieker's testimony, Ramsey showed up in the fourth-floor media overflow room to berate her. After former Chief Financial Officer Andrew Fastow testified, Ramsey called him a "sick, crippled person" and a "twisted man."

And Glisan? On Tuesday, at a sidewalk news conference, Ramsey dubbed him a puppet in a "scripted ventriloquism show." On Wednesday, Ramsey said Glisan "contradicted the whole theory of intelligent design."

The evolution of the government's case seems to worry the defense. Glisan's testimony brings it full circle to the opening arguments when prosecutor John Hueston told jurors Enron was "about the lies."

Enron's lies were hidden in complex accounting, perhaps even exacerbated by market conditions, but they are what eroded the company from its core.

"I never saw so many lies," Lay said.

According to Glisan, he had. He was there for all of them, and so was Skilling.

In a rapid-fire staccato, Glisan ran through the statements Lay made on conference calls and employee meetings touting Enron's financial health in late 2001. All lies, Glisan said.

Glisan said in October of that year, Lay told him to figure out how big a loss Enron could report and still maintain its credit rating.

He instructed Glisan to use that loss number as the basis for the quarterly earnings report.

That, as Glisan said, was "backwards," the opposite of how companies are supposed to compile financial results.

Warned about violation

In 2000, discussing the creation on the first Raptor hedging vehicle with Skilling, Glisan said he warned his boss that the deal violated accounting rules. It also required Enron to buy a put option on its own stock, essentially betting against itself.

Skilling indicated he liked it.

"Mr. Skilling noted that this was not a deal that he would recommend except that it allowed him to circumvent the accounting rules," Glisan said.

When the deal was presented to Enron's finance committee for final approval, Lay "giggled," Glisan said. Asked in what sense, Glisan replied, "in delight."

Under cross-examination Thursday, Lay's attorney said his client doesn't giggle. Glisan conceded it may have been a chuckle.

First to go to jail

Glisan was the first Enronian to go to jail, pleading quickly after he was indicted. He must have known when he put $5,800 in one of Fastow's partnerships and drew out $1 million a few months later that he had no defense for what he'd done at Enron.

When he offered to resign over that deal, by the way, he says Lay told him his participation was "OK" and that "the worst thing I could do was resign."

If we are to believe Lay and Skilling, everyone else is lying - Mark Koenig, Paula Rieker, Ken Rice, Wanda Curry, Timothy Belden, Wesley Colwell, Kevin Hannon, David Delainey, Andrew Fastow, Christopher Loehr and Ben Glisan. Liars all.

Stories all match

Yet their stories, for the most part, match. If they are lies, they are remarkably coherent ones.

Taken as a whole, the testimony of the former Enron employees portray a company out of control, desperately deceiving customers, trading partners, employees and investors to keep itself together.

By the time Skilling fled the sinking ship in August 2001, Enron's financial position was, according to Glisan, "weak." The fall of 2001 was a season of deception in which Lay would say almost anything to keep the truth from the market.

In short, Enron was a colossal lie, perhaps the biggest ever told in the history of American business.

"I've never heard so many lies," Ken Lay said.

Until Enron came along, neither had we.

# APPENDIX CI

*Halfway point; The government has rested in the Enron trial, but it has produced little we didn't already know.*

THE HOUSTON CHRONICLE

Friday, March 31, 2006

3 STAR EDITION

Section B, page 8

By Staff

The government's case against former Enron Chairman Ken Lay and CEO Jeff Skilling finished after 22 witnesses. Many were former employees who admitted committing felonies and who testified that Lay and Skilling knew what was going on but told the public a different story. Scattered among the bad apples was a smattering of honest Enron alums who stated that their top bosses knowingly condoned fraudulent activities.

Testimony documented both men's outsized earnings from the company during a period when both claim to have been in the dark about tens of millions of dollars diverted by former Chief Financial Officer Andy Fastow to himself and confederates through a series of off the book partnerships. The participants in the schemes claimed Skilling and Lay were aware of what was going on.

The last prosecution witness was the squeaky clean whistle-blower Joanne Cortez, an Enron bookkeeper who monitored Lay's use of a company line of credit to regularly cash in his corporation stock, thereby secretly realizing $70 million while publicly exhorting employees to hold on to their shares. So ethical was Cortez that even though she knew her boss was unloading his stock, she refrained from selling her own because she suspected such action might constitute illegal insider trading. Prosecutors are hoping the jury remembers the image evoked by Cortez of her crying in a stairwell after discovering that Lay's Enron credit line had been boosted by $3.5 million as the company plummeted toward bankruptcy.

At the midway point, as they did in their opening statements, defense lawyers point to the lack of documentary evidence proving their clients did anything illegal and are preparing to put them on the stand to proclaim their innocence. The defense begins presenting its case on Monday.

As outlined in their opening statements, defense lawyers contend that Fastow and his co-conspirators are the only villains; that other former Enron executives were bullied by the prosecution into pleading guilty, giving up years of freedom and testifying against the defendants; and that the company collapsed when investors panicked.

Mike Ramsey, who represents Lay, said at the start of the trial, "Failure is not a crime. Bankruptcy is not a crime ... ." Daniel Petrocelli, defending Skilling, said, "This is not a case of hear no evil, see no evil. This is a case of there was no evil."

The problem for the defense is that anyone exposed to the vast literature and film library created in the last five years documenting the rise and fall of Enron already knows that greed ran rampant in its corporate offices and executives routinely hyped the company's value far beyond its real worth. Thus, while the government by law bears the burden of proof, many in Houston will require the defense to convince the jury that Lay and Skilling did nothing illegal as they extracted millions of dollars from the doomed company while touting its supposed strengths to the investing public.

# APPENDIX CJ

*The dirt that jurors won't hear*

THE HOUSTON CHRONICLE
Sunday, April 2, 2006
2 STAR EDITION
BUSINESS, page 1

By Loren Steffy, Staff

It could have been worse. That thought must be crossing the minds of the lawyers representing Ken Lay and Jeff Skilling as they prepare to put on their defense this week.

Some of the Enron saga's most peccant details haven't been allowed in court. Even before the trial began, the defendants' high-dollar legal team managed to keep a lot of potentially damaging information about their clients from the jury.

Jurors, for example, haven't heard about the millions of dollars in stock losses suffered by employees and retirees. Pipeline worker Johnnie Nelson told jurors he lost all his retirement savings, but he didn't mention the amount. He later told reporters it was about $500,000 - roughly 10 times his annual salary - but he said that outside of court.

In the weeks before the trial, defense lawyers argued that such information was too prejudicial, in other words, too inflammatory. Jurors are more likely to sympathize with average folks like Nelson who suffered big financial losses. That sympathy might override a full concern of the facts, defense lawyers argued.

U.S. District Judge Sim Lake agreed.

$1 million in checking Ken Lay's losses, by the way, are fair game. Last week, Lay's old checkbook ledger, shown in court, displayed a $1 million balance. That's hardly inspiration for pity.

Then there's my old friend Grandma Millie, who's been largely absent from these proceedings. Millie, of course, was the fictional California widow who Enron traders joked about overcharging for electricity.

The California energy crisis of 2000 and 2001, in which Enron played a starring role, won't be discussed during the trial. That's partly because neither Lay nor Skilling were indicted on charges related to the California situation.

Prosecutors simply wanted to mention it because they say it was an example of Skilling lying to investors. Skilling told analysts, for example, that profits from California had little impact on Enron's finances.

California was mentioned only as the electricity market related to reserves and tax issues that affected Enron's finances.

Lake, however, found that evidence of Enron's contribution to California's state of emergency and even the names of its trading strategies - "Fat Boy," "Death Star," "Get Shorty," - were too prejudicial.

He also agreed with the defense that tapes of traders' obscenity-laden jokes about Millie and their cheers for California wildfires were too inflammatory. After all, how can you not convict a guy whose company took advantage of little old ladies and laughed about it?

Bid to avoid Valhalla The defense also tried to preclude a discussion of Valhalla, Enron's first trading boondoggle back in 1987, three years before Skilling joined the company. At the time, Enron was struggling amid weak natural gas prices and a stock market crash.

But traders at Enron's small office in upstate New York were making a killing betting crude prices would fall. They built a short position far in excess of anything the company could cover, and came close to driving Enron into bankruptcy.

Lake neither approved nor denied the defense's request, but told prosecutors they would have to get a bench ruling from him before discussing Valhalla. It didn't come up in the prosecution's case. However, if the defense "opens the door" to the issue, that could change.

If - when Lay takes the stand this month - he says something like "I never condoned illegal activity at Enron" or "ethical conduct was important at Enron," Lake may allow prosecutors to dredge up the details of what Lay allowed to fester in Valhalla.

The topic is a quagmire, and Lay has probably been coached to avoid using words like "never."

Didn't win them all While the defense has been able to keep a lot of potentially damaging evidence out of court, it hasn't won all its battles. Just last week, Lake denied a defense motion to prevent the testimony of witnesses such as Joanne Cortez, who monitored Lay's personal line of credit with the company. Lay's lawyers argued the matter was irrelevant because it didn't relate to any charges in the indictment.

Cortez, though, showed jurors how Lay used Enron as a personal piggy bank, borrowing $77 million in increments, repaying it with Enron stock, and ultimately stiffing the company for about $7 million.

Nothing that the defense convinced Lake to exclude seemed to hurt the prosecution's case.

A courtroom isn't the place for an unrestrained review of sins. So the extraneous facts of the Enron case, those deemed too prejudicial, too inflammatory, will remain unheard in hopes that we get a verdict based on fact and not emotion.

But for those of us outside the courtroom, it's worth remembering what the defense doesn't want the jury to hear.

In some ways, what hasn't been said in court is as telling as what has.

# APPENDIX CK

## *Judging best, worst and oddest moments in courtroom*

THE HOUSTON CHRONICLE

Sunday, April 2, 2006

4 STAR EDITION

Section A, page 17

By Mary Flood, Tom Fowler, John C. Roper, Loren Steffy, Staff

This is obviously a serious trial with two men's futures weighing in the balance.

But given that it's been nine weeks and humans are involved, there are bound to be light or odd moments, even in such an important case.

Here are the Chronicle's "awards" for some of those moments we've documented in print and online:

Most Interesting Odor: Jeff Skilling's lawyer Daniel Petrocelli was asked by U.S. District Judge Sim Lake to wash off his cologne because it was bothering a juror.

Biggest Freudian Slip: Prosecutor Kathryn Ruemmler - apparently unintentionally - referred to Ken Lay as "Mr. Lie."

Most Disturbing Animal Imagery: Ex-CFO Andrew Fastow describing verbal side deal guarantees as "bear hugs."

Most Disturbing Wardrobe Imagery: Fastow frequently referring to explaining Enron's true financial health as "opening the kimono."

Witness With Best Snappy Comeback: Pipeline worker Johnnie Nelson, who lost his retirement account. When told that Lay lost hundreds of millions of dollars, Nelson snapped back sarcastically: "I'm heartbroken."

Silliest Gaffe on Cross-Examination: A defense lawyer asked Ben Glisan Jr. to look at not one, but two, calendars he claimed were Glisan's but actually belonged to someone else. A promise to "get back to that" was broken.

Loudest Moment: Lay lawyer Mike Ramsey's shouting questions to hearing-impaired Fastow so loudly members of the jury and audience winced.

Best One-Act Play: A dramatic reading by prosecutors with Leo Wise as an SEC questioner and Sean Berkowitz as Skilling.

Best Clothing Coordination: Most on the jury panel wore red or pink on Valentine's and Mardi Gras beads on Fat Tuesday.

Best Nickname: Sherron Watkins testified colleagues called her "Buzzsaw."

Best Iron Man Performance: Lay lawyer Ramsey for not missing a day of trial despite needing and having a stent installed in his heart mid-trial.

Best Self-Protection: Witness Paula Rieker firmly but politely asked Petrocelli, hovering near the witness stand, to step back to the podium.

Worst Civic Pride: A juror's employer cut back her pay because she is on the jury.

Least Coincidental Meeting: Testimony showed inmate Glisan encountered Skilling in a federal courthouse elevator in February 2004. Glisan was in shackles, and Skilling was handcuffed, having turned himself in that day.

Oddest Spectator: Richard Scrushy, the former CEO of HealthSouth Corp. acquitted of criminal charges last year, stopped by to "hear the truth."

Most Amusing Nap: A national magazine reporter fell asleep in an overflow courtroom chair early in the trial with the Enron tome "Conspiracy of Fools" opened across his chest.

# APPENDIX CL

## *Prosecution's jabs score points against Skilling*

THE HOUSTON CHRONICLE
Friday, April 21, 2006
2 STAR EDITION
Section BUSINESS, page 1

By Loren Steffy, Staff

AFTER court on Wednesday, fallen Enron executive Jeff Skilling stood with his lead attorney, who joked that the government had abruptly ended its cross-examination because prosecutor Sean Berkowitz had "run out of questions."

Did the prosecution blow it? Did 4 1/2 years of preparation end with a whimper? In the prosecution's quest to keep the case simple and understandable for the jury, did it oversimp- lify? Did its less-is-more strategy turn out to be not enough?

Certainly, prosecutors could have gone into more detail, and their effort to keep the case simple may yet work against them. But Berkowitz scored some key points in his cross-examination of Skilling this week:

He got Skilling to concede that when he left Enron in August 2001, there were "issues" that

Enron faced with the international assets, with broadband, with the retail electricity business. Skilling has long claimed nothing was wrong at Enron and that he left it a thriving company.

The issues, you see, weren't actually problems.

He turned Photofete, a company Skilling invested in that was run by a former girlfriend, into a major character issue. Photofete essentially lived off of Enron contracts, but Skilling said the possibility of a conflict of interest didn't occur to him.

Skilling conceded Thursday that he violated Enron's ethics policy, and Berkowitz raised the possibility that he backdated one of his investment checks to avoid paying federal gift taxes. Skilling denied it, but he said he couldn't recall what the checks were for or when he wrote them.

Berkowitz showed how Skilling tried to mislead not just by omission, but with financial gibberish. Skilling argued, for example, that Enron was honest with the market because it published the company's value-at-risk data, a measure of risk.

He claimed anyone who looked at the data could determine the impact of commodity prices on Enron's profit. "Everybody in the industry understands this and can translate this," he said Thursday.

Berkowitz played a tape in which managers from Alliance Capital, which manages almost $580 billion worth of investments in thousands of companies and which was one of Enron's biggest shareholders, questioned Skilling on that very issue. They had the

VAR numbers, but still couldn't tell how prices were affecting profits.

Skilling said it was because Alliance had some "new guys" who didn't know the business.

Berkowitz cast doubt on Skilling's motive for leaving Enron in August 2001. Skilling claimed he left to spend more time with his family, but Berkowitz suggested two months later he was interested in running Lucent Technologies. Skilling denied it.

A pattern

This was something of a pattern for Skilling, as if he needed periodic ego strokes. Several times, he told codefendant Ken Lay he was going to quit, only to be talked out of it.

Two months after he quit for good, he tried to persuade Lay to bring him back, then sat by the phone all night, he said, waiting for the final approval, which never came.

Skilling admitted he was "devastated."

This case, because of its circumstantial nature, rests largely on witness credibility. Skilling, the smart guy with the bad memory, argues that all his former colleagues are testifying against him to get lighter prison sentences. But even the felons had more credibility.

Skilling, talking to reporters on Thursday, said he felt he'd had the opportunity to say what he wanted to say. Even his direct testimony, though, worked against him. He appeared arrogant and unrepentant, still sure he alone was right.

On cross, he denied, evaded or simply failed to recall, arguing every point, derisively repeating questions as if he were annoyed by their stupidity. He bristled at not being able to control the proceedings. Once, he even raised his own objection, drawing a rebuke from the judge.

Skilling's testimony proves he doesn't get it. Enron is gone, failed at his hands and those of his codefendant. He's now had a chance to tell his story, implausible though it was.

Rebuttals aplenty

Skilling wove his tale, and prosecutors contradicted it with documents, with testimony and in some cases with Skilling's own words.

"When we started this testimony, we agreed that the most important thing that the jury had to rely on was your word," Berkowitz said.

After almost three days of sparring, it was clear what that word was worth. Berkowitz didn't run out of questions. Skilling ran out of credibility.

# APPENDIX CM

*Skilling, Lay lawyers wave their wands frantically*

THE HOUSTON CHRONICLE
Wednesday, May 17, 2006
3 STAR EDITION
BUSINESS, page 1

By Loren Steffy, Staff

All they lacked were pointed hats with stars and half-moons.

Lawyers for Ken Lay and Jeff Skilling played the role of alchemists Tuesday, wrapping up their case by dismissing claims of an Enron conspiracy simply because no one wrote anything down.

Never mind that few conspiracies are documented.

Skilling attorney Daniel Petrocelli and a quartet of lawyers for Lay hammered on key prosecution witnesses who pleaded guilty and agreed to cooperate with the government.

The witnesses, Petrocelli argued, were "robbed of their free will" by the deal-making process of the government. Nothing they say is credible, he said. On the witness stand they lied to appease their government handlers.

"It's hard to create fake documents, but it's not hard to create fake testimony," he said. "These people came up here, and they didn't tell big lies, they told little lies. These are good people.

"That's how they build the whole case: coercion."

A few moments later, Petrocelli berated the government for not calling Rick Causey, Enron's former chief accounting officer who was, until a few weeks before trial, a co-defendant in this case. Causey's testimony, though, by Petrocelli's own definition, wouldn't have been credible because he, too, has a deal with the government.

Prosecutors may have not called Causey because they didn't feel they needed to.

Petrocelli and the Lay lawyers rallied around the increasingly tired argument that the government is criminalizing normal business practices. With a wave of the wand, the alchemists would turn Enron's conduct into something that all businesses do.

Executives shouldn't be prosecuted for taking risk. That is, after all, what real businesses do. Part of the case against Lay and Skilling involves the exact opposite. Too many of Enron's deals lacked the risk that made them true business transactions.

Nor is the case about Enron's failure. It's about "why" Enron failed. Lay and Skilling aren't on trial for pursuing bad ideas such as Enron's broadband boondoggle. Lots of CEOs have bad ideas.

But Lay and Skilling never owned up to their mistakes. They didn't tell the marketplace that the broadband unit's failed deal with Blockbuster was a money-loser or that most of the unit's so-called profit came from selling unused fiber optic cable in its network. In fact, they led investors to believe the opposite. Skilling, for example, told the market the division was worth $40 a share, or $32 billion.

Full-blown doofus

In wrapping up his case, Petrocelli conjured up a full-blown doofus defense. Skilling, he said, wasn't very good at running Enron. He was a builder, you see, not a manager.

The jury is to believe that Lay picked Skilling to run the company, even though he wasn't good at running companies. How did someone who was so incompetent fake success for so long? Why was Skilling promoted and repeatedly put in management positions if he couldn't run anything? Never once was he reprimanded, demoted or fired for his ineptitude.

Petrocelli has a bombastic style, and his delivery makes what he says sound important, but it's unclear if jurors were buying it. At one point, he instructed them to write down exhibit numbers for documents he said supported his point. None did, according to a colleague who could see the jury.

Misleading Q&A

While Lay's team hit on many of the same themes, it also wanted to convince jurors that Lay's sales of Enron stock to meet margin calls in late 2001 were aboveboard. When an employee asked Lay about Enron's falling stock price in late 2001, Lay, implying his support for the company, said he was a buyer of the stock. That wasn't a lie, one of his attorneys, Bruce Collins, argued. Lay "did" buy some stock that year.

"That's a complete question and answer," Collins said. Actually, it's a misleading answer because employees and investors didn't know Lay had sold $70 million worth of stock, far more than he bought in 2001. By saying he was a buyer, Lay led employees to believe otherwise.

It was just another distortion that Petrocelli and the Lay quartet would morph as if by magic into truth. The problem for this defense team, though, isn't their formidable talents of presentation. Their arguments almost sound convincing. The problem is the utter lack of substance.

Even alchemists need some material to work with. The defense is attempting to spin a golden acquittal from thin air.

# APPENDIX CN

## *Ken Lay: Convicted on all 10 counts; Jeff Skilling: Convicted on 19 of 28 counts; Guilty! Guilty!; Verdict will mean prison for ex-Enron chiefs*

THE HOUSTON CHRONICLE
Thursday, May 25, 2006
EXTRA EDITION
Section A, page 1

By Mary Flood, Mark Babineck, John Roper, Dan Feldstein, L.M. Sixel, Staff

The defendants, who could face decades in prison, are each released on $5 million bond, with sentencing set for Sept. 11. The convictions cap a 4 1/2- year government investigation that also resulted in 16 guilty pleas from ex-Enron executives.

A federal jury convicted former Enron chiefs Ken Lay and Jeff Skilling today of conspiracy and fraud, marking the climax of one of the biggest business scandals in American history and ensuring prison time for two of Houston's best-known executives.

After 16 weeks of testimony and six days of deliberation, the eight-woman, four-man jury found Lay guilty of all six counts of conspiracy and fraud and convicted Skilling on 19 of the 28 counts against him. That included charges of conspiracy, fraud and lying to auditors. He was convicted of one count of insider trading and acquitted on nine other counts of insider trading.

U.S. District Judge Sim Lake also found Lay guilty of four counts related to his personal banking activities. Lake heard those charges in a separate trial, without a jury.

Lake set sentencing for Sept. 11. Experts says the men are likely to receive sentences of between 12 and 25 years.

"Obviously, it did not come out the way we hoped. It doesn't change our view of what happened at Enron, and it certainly doesn't change our view of Jeff Skilling's innocence," said Skilling's attorney Daniel Petrocelli, who promised a "a full and vigorous appeal."

Skilling said he was disappointed.

"We fought the good fight," Skilling said. "Some things work; some things don't."

Juror Wendy Vaughan said she didn't find the testimony of Skilling and Lay to be credible.

"I wanted to believe very much what they were saying but I couldn't," she said.

The jury panel spent 16 weeks listening to often diametrically opposed testimony, with the government calling 25 witnesses plus three more on rebuttal. Several had struck cooperation agreements with the government and acknowledged crimes, and most claimed Lay and Skilling were part of a conspiracy to profit personally by duping the world about Enron.

"We stole. We all benefited financially at the expense of others," said former Chief Financial Officer Andrew Fastow, who is expected to serve a 10-year sentence after admitting he masterminded fraudulent bookkeeping schemes and bled Enron to the tune of $45 million in the process.

The defense impugned Fastow's character and told jurors he was a liar then and he's a liar now, implying he fabricated evidence and testimony that Skilling approved of "bear hug" deals with Fastow's LJM partnerships to hide Enron debt and guarantee Fastow wouldn't lose money.

The defense called 31 witnesses, including Skilling and Lay, many taking the stand in brief stints to rebut specific points raised by the prosecution. Of course, the most important men to testify were Skilling and Lay themselves.

Skilling, 52, went first on April 10 and testified over eight days, much of it on direct examination by his Los Angeles-based defense attorney, Daniel Petrocelli.

Petrocelli, a career civil attorney trying his first criminal case, methodically took Skilling through each charge in four days of direct examination. Skilling had a reputation for being controlling and abrasive, but he seemed relaxed and downright professorial while telling jurors he committed no crimes, that most of Enron's dealings were legitimate and that the real criminal was Fastow.

One of Skilling's dramatic moments came on April 13, when Petrocelli seized on bubbling emotion and engaged his client in powerful exchange about what Skilling perceived as abuse of power by the Justice Department.

"We are innocent. And by 'we' I mean Enron Corporation," Skilling said. "It was a fine company. I am innocent of all of these charges, and I will fight for that for a long time."

Enron Task Force Director Sean Berkowitz began cross-examination the next week, and Skilling surprised many by keeping his cool despite pointed questioning that sometimes turned embarrassing and personal, such as his $180,000 stake in an ex-girlfriend's Internet startup company called Photofete that did business with Enron.

"Would you agree with me that this may be a conflict of interest, at least within the (company's) code of ethics?" Berkowitz asked.

"It may be," Skilling replied, appearing humbled.

Defense lawyers cited Photofete as a prime example of prosecutors seeking to smear Skilling and Lay, who also was an investor, by throwing information at the jury that is not part of the indictment.

"Don't come to Houston, Texas, and lie to us," Lay attorney Chip Lewis shouted at prosecutor John Hueston during closing arguments, referring to Photofete.

Lay, 64, took the stand April 24 and testified over six days. Contrary to Skilling's calm demeanor, Lay seemed easily irritated by defense attorney George "Mac" Secrest. Secrest was substituting for lead defender Mike Ramsey, who bowed out for much of the trial because of surgery.

Lay's demeanor turned from grouchy to hostile once Hueston began questioning, with fireworks popping as soon as cross-examination began when the prosecutor accused Lay of trying to contact potential trial witnesses to get their "stories straight."

Lay, sometimes snarling into the microphone, shot back at Hueston.

"I don't have a story. I have my recollection of the facts and they are totally different than Mr. Fastow's," Lay said.

In closing arguments, Berkowitz seemed to agree jurors should pay close attention to what Lay and Skilling said in the ninth-floor courtroom and contrast it to what they were told what actually happened on the 50th floor of the Enron Building, a few blocks down Smith Street.

"They lied to investors and omitted critical facts," Berkowitz said. "And they lied to you, ladies and gentlemen, from the stand."

Berkowitz also reminded the jurors that justice for Lay and Skilling, who invested at least $38 million combined in their united defense, should not be bought.

Ramsey, who recovered in time to make some closing arguments, warned jurors that only they could judge the facts and not the host of politicians, columnists, jilted investors and prosecutors who want to see Lay and Skilling behind bars.

"There may be a court in America that bends to political pressure but it's not this court! There may come a day when an American jury yields to a media mob, but it's not this jury," said Ramsey, one of Houston's most-respected criminal lawyers. "We're going to have a fair jury here."

The attorneys and Lake took one day to pick the eight-woman, four-man jury that heard the case. Many among the panel knew little about Enron, although some confided in questionnaires and in court that "greed" or misdeeds took the company down.

"I just kind of tune this out," one juror, an engineer, said at the hearing. "It's kind of old news."

Tuning out Enron has been a neat trick in the Houston area over the past five years as the ruination of what was dubbed the nation's seventh-largest company has remained the dominant U.S. corporate scandal among a flurry of such implosions around the turn of the century. Scandal also enveloped companies like WorldCom, Tyco and Adelphia, but Enron always has been at the forefront.

That's especially so in Houston, where thousands of employees lost their jobs - 4,000 at once the day after Enron filed for bankruptcy on Dec. 2, 2001. Many lost their retirement savings, which was invested in near-worthless Enron shares.

Enron was born in 1985 upon the merger of Houston Natural Gas and Omaha, Neb.-based InterNorth. The new company, then a massive pipeline concern, made Houston its home. Based on the vision of Lay, the chairman and chief executive, and Jeff Skilling, a consultant who later became chief operating officer, Enron became a major trader and proponent of open energy markets.

By August 2000, propelled by energy trading, new businesses such as retail energy services and Internet bandwidth and a reputation as one of America's most innovative and aggressive companies, Enron's share price crossed $90. Skilling replaced Lay as CEO the following February.

However, prosecutors say fraudulent bookkeeping and financial reporting started to become the norm at Enron by 1999, and the lawbreaking grew more rampant as the company internally struggled to impress Wall Street by keeping up its fantastic earnings growth.

Questions about Enron's accounts began to crop up in early 2001, rumors Lay and Skilling blame on short-sellers betting on the share price dropping. The stock price steadily slipped during the year, and Skilling abruptly announced his resignation for personal reasons in August.

Enron Vice President Sherron Watkins warned Lay of a potential accounting time bomb regarding Fastow's machinations shortly after Skilling left, but an investigation by Vinson & Elkins found no major issues. The Securities and Exchange Commission began a formal investigation in October 2001.

...

The verdict, count by count

On paper, it may appear the maximum prison sentences former Enron executives Jeff Skilling and Ken Lay face add up to many, many decades. In reality, however, experts say the men will probably see sentences of between 12 years and 25 years. This includes Lay's bank charges, which were tried separately.

Charges against Jeff Skilling / Maximum sentence, in years / Verdict

Conspiracy to commit securities and wire fraud / 5 / GUILTY

Securities fraud (Raptor transactions) / 10 / GUILTY

Securities fraud (Financial statements, 1999 10K, March 30, 2000) / 10 / GUILTY

Securities fraud (Financial statements, 2nd quarter 2000 10Q, Aug. 14, 2000) / 10 / GUILTY

Securities fraud (Financial statements, 3rd quarter 2000 10Q, Nov. 14, 2000) / 10 / GUILTY

Securities fraud (Financial statements, 2000 10K, April 2, 2001) / 10 / GUILTY

Securities fraud (Financial statements, 1st quarter 2001 10Q, May 15, 2001) / 10 / GUILTY

Securities fraud (Financial statements, 2nd quarter 2001 10Q, Aug. 14, 2001) / 10 / GUILTY

Securities fraud (Analyst call, Jan. 22, 2001) / 10 / GUILTY

Securities fraud (Analyst conference in Houston, Jan. 25, 2001) / 10 / GUILTY

Securities fraud (Analyst call, March 23, 2001) / 10 / GUILTY

Securities fraud (Analyst call, April 17, 2001) / 10 / GUILTY

Securities fraud (Analyst call, July 12, 2001) / 10 / GUILTY

False statements to auditors in annual representation letter (1999 10K, March 13, 2000) / 10 / GUILTY

False statements to auditors in annual representation letter (2000 10K, Feb. 23, 2001) / 10 / GUILTY

False statements to auditors in quarterly representation letter (2000 2nd quarter 10Q, Aug. 11, 2000) / 10 / GUILTY

False statements to auditors in quarterly representation letter (2000 3rd quarter 10Q, Nov. 13, 2000) / 10 / GUILTY

False statements to auditors in quarterly representation letter (2001 first quarter 10Q, May 15, 2001) / 10 / GUILTY

Insider trading ($739,000 on April 25, 2000) / 10 / NOT GUILTY

Insider trading ($6.34 million on April 26, 2000) / 10 / NOT GUILTY

Insider trading ($1.29 million on Aug. 30, 2000) / 10 / NOT GUILTY

Insider trading ($5.22 milllion on Sept. 1, 2000) / 10 / NOT GUILTY

Insider trading ($972,000 on Sept. 5, 2000) / 10 / NOT GUILTY

Insider trading ($6.04 million on Nov. 1, 2000) / 10 / NOT GUILTY

Insider trading ($1.65 million on Nov. 2, 2000) / 10 / NOT GUILTY

Insider trading ($3.80 million on Nov. 7, 2000) / 10 / NOT GUILTY

Insider trading ($20.99 million on Nov. 15, 2000) / 10 / NOT GUILTY

Insider trading ($15.59 million on Sept. 17, 2001) / 10 / GUILTY

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Charges against Ken Lay / Maximum sentence, in years / Verdict

Conspiracy to commit securities and wire fraud / 5 / GUILTY

Wire fraud (False/misleading statements in employee meeting Sept. 26, 2001) / 5 / GUILTY

Wire fraud (False/misleading statements in employee meeting Oct. 23, 2001) / 5 / GUILTY

Securities fraud (Rating agency call, Oct. 12, 2001) / 10 / GUILTY

Securities fraud (Analyst call, Oct. 16, 2001) / 10 / GUILTY

Securities fraud (Analyst call, Oct. 23, 2001) / 10 / GUILTY

District Court Judge Sim Lake heard evidence on the four bank charges, listed below, against Ken Lay in a bench trial that began the day after jurors started deliberations. Lay's prison sentence could range from no time, since the banks did not lose money, to a likely maximum of six months per count. The sentences would most likely be served concurrently with each other and any sentence that comes from the other trial.

Bank fraud (Line of credit agreement) / 30 / GUILTY

False statements to banks (Bank of America) / 30 / GUILTY

False statements to banks (Chase Bank of Texas) / 30 / GUILTY

False statements to banks (Compass Bank) / 30 / GUILTY

# APPENDIX CO

## *Most Houstonians Say Convictions Serve Justice*

THE HOUSTON CHRONICLE

Thursday, May 25, 2006

By David Kaplan, Shannon Buggs, Nancy Sarnoff, Bill Hensel Jr. and Lynn Cook

The reaction to the convictions of Jeff Skilling and Ken Lay was almost universally positive around Houston.

### I. Outside the courthouse

Outside the courthouse, when Skilling and his attorney Dan Petrocelli walked away after the verdict they were mobbed by the media and protected by police officers on horseback as they moved away.

The crowd that gathered to watch included Shirley Cusack, a Shell tax accountant who has been following the trial, and was satisfied with the verdict.

:"I was very satisfied with the verdict. It has a lot of ramifications for the accounting profession - the tricks that they pulled at Enron," Cusack said.

Tamara Brown, a University of Houston Downtown student, had a camera with her to record the moment.

"I wanted to get their faces. I want to see their facial expressions after they found out that their lives didn't work. I need some mega-zoom about now."

"This makes a big statement. Hopefully this will show other companies, don't ever try this," said Brown.

Another spectator agreed the sentence should be long.

"I think they should get the maximum. I am not the type of person who wishes that for someone but in this case too many lives were affected.`` said Kathy Stanley, a Conoco Phillips engineer technician.

**II.** At a Montrose cafe

Before the verdict was announced at Brasil, a cafe in Montrose, the sound was turned up on the televisions for the people there, who all were pleased by the convictions.

"It's a great day in Houston, Texas. Justice has finally prevailed. It makes me very happy to be an attorney in the state of Texas. I guess the American Judicial system is not as broken as people think it is," said Mike Harssema a criminal defense lawyer drinking coffee at Brasil.

Harssema, who had members of his family that lost money on Enron stock, said he thought Lay was "the biggest criminal since Al Capone."

One woman's jaw dropped when it was announced. Kristen Mitchell said she didn't believe Lay and Skilling would get convicted.

“A lot of people get away with stuff,” said Mitchell, a 22-year-old student at Texas A&M. "I hate big companies because they screw over the little people and I am glad they got screwed and are having to pay for it.”

Amy Howell who was there thought the pair should face a harsh sentence.

“They should be shoveling coal for life. they should not be sent where Martha Stewart was sent,” said the Houston native who is now living in California. She was traveling with her husband Travis Howell. who said something good could come from the verdict.

“If they hadn’t been guilty no one would want to invest in the stock market. There would be not justice or accountability for the executives,” said Travis Howell.

III. At a Becks Prime

The people at the Becks Prime at Memorial Park were critical as well.

“I think that’s good. I think sometime some people in the corporate world think they are above the law. “ said Clyde Bettes who installs building automation systems who was watching the verdict.

“It’s unfortunate there were a lot of people that were affected, they will never get their money,” said Bettes.

Roy Belco, who does architectural work, said ``It seems as though they got their just deserts.”

One of the rare sympathetic voices for Lay came from John Bass, who owns a small homebuilding firm. He said he was not surprised by the guilty verdict concerning Skilling but a bit surprised by the verdict against Lay whose defense rested on his trust of what other people at Enron told him.

"I am dependent on what people tell me, people who work for me" said Bass. "They've got to be truthful. I test all my employees for honesty and integrity. I couldn't do the volume of work I do without my 10 employees."

## IV. In the Galleria

At TFS Energy, a brokerage firm in the Galleria area, five natural gas brokers worked and watched CNBC on a flat screen television.

They had side bets between each other on the verdicts. The consensus was Skilling would get convicted but Lay would be acquitted.

"Skilling's going down; Lay's going to the retirement home," broker Doug Kuni said before the verdict was read. "`I'd have to receive 10 to 1 odds to take Lay going down."

A few minutes later, when it was clear both men had been convicted on most of the charges, the brokers disregarded their predictions in favor of figuring out the meaning of the trial's outcome.

"I think it's awesome," said Dan DeFoggi. "I really thought they would get off. This usually doesn't happen. Usually, the high priced attorneys will get them off and only the grunts will go to jail."

## V. Other views

Duane Windsor, a professor of management at Rice University calls this "a believability case."

"Their story just wasn't believable. These are wealthy people, successful people. How could somebody be so intelligent be so ignorant?" Windsor asked, referring to the so-called dummy defense that Lay and Skilling employed, arguing they were duped by underlings like Fastow and had no idea what was going on at Enron.

Raymond Plank, Chairman of Houston-based Apache Corp. and a veteran of the oil patch, said he was "elated" at the verdict.

"Justice has been served. I'm elated. And this is going to meet the approval of corporate America. And it should meet with the approval of so many others whose lives and careers have been damaged - and net worth has been damaged - by individuals who took advantage of them for personal gain."

"I hope this is a positive thing for restoring faith in the system. My only problem is that it took too long," Plank said. "I would hope in the sentencing process they would begin to serve a long term just as quickly as possible. And I would hope the bond that's required should be made sky high."

Plank added that it's been a tough battle for the U.S. Justice Dept., but he hopes the outcome in the Enron case "encourages them to go after a few more rats on the fringes."
Plank was a critic of Enron for many, many years.

"'It was a series of things. I studied as much of the record as I could at the time when trading malfeasance was going on at Enron. And it was clear to me they were trying to cover that up. And the best thing to do throughout history has always been to face up to problems right when they appear.

``When I met Ken Lay ... I could see how his charm could mesmerize people. But in terms of the words that came out of his mouth, he was talking the talk but not walking it. In areas in which our two businesses came together, I felt that he and Jeff (Skilling) - who I think was his hatchet boy - were sticking it to a significant segment of our industry and that compounded my suspicions," Plank said.

"'Trading was part of it. They were contributing to price volatility, which is the enemy of upstream producers who have to make decisions in a current time frame that you have to live with long down the road. Lay was talking out of both sides of his mouth. Then Skilling came in and he was the epitome of arrogance and condescension. I also think it was pretty evident to the degree to which they had an extensive lobbying power force in Washington. They needed that umbrella to carry on their nefarious business."

**VI.** The Mayor's reaction

Mayor Bill White saw this verdict as offering the city closure on this chapter of its history.

"I think it's a closed book on the Enron saga,`` said White. "People need to remember there were many thousands of hardworking Enron employees who did nothing wrong. And it's amazing that Houston has recovered so spectacularly over the last two years form the collapse of Enron and some others in the merchant energy sector."

In the last six months and the next six months, we'll add more jobs in this region than were tragically lost when Enron collapsed, and that is a story of the resilience of Houston."

# APPENDIX CP

*Guiltiest guys in the room; Ken Lay and Jeff Skilling may have mastered the universe of spin and deceit that was Enron, but in the end the pair could not beat the rap.*

THE HOUSTON CHRONICLE

Friday, May 26, 2006

3 STAR EDITION

Section B, page 8

By Staff

A Houston jury brought the 15-week Enron trial to a decisive conclusion by finding former Enron CEOs Jeff Skilling and Ken Lay guilty of most of the counts leveled by prosecutors. Skilling was convicted of 19 counts, including conspiracy, securities fraud, false statements and insider trading. Lay was found guilty on every score, six counts of conspiracy and fraud.

U.S. District Judge Sim Lake read the verdict and then pronounced Lay guilty on four other counts alleged against him in a separate bank fraud trial conducted without a jury. Both men could spend much of their remaining lives in prison.

What do the sweeping judgments mean? They signal a victory for two key systems in American society: business and justice.

The nature of free enterprise drives business to innovate, both in products and management. It also can lead to excesses that cross the boundaries of legality, such as the fraudulent off-the-books accounting techniques Enron executives used to hide losses and inflate profits. Verdicts such as this one serve as a corrective to such abusive business practices. They also put executives on unmistakable notice that they are responsible for what goes on inside their offices and that protestations of ignorance will provide an unconvincing defense.

Thursday's verdicts also testify to the ability of a judge and jury to sort through a maze of complicated accounting transactions and contradictory testimony to reach a crèdible judgment that accurately weighs facts but doesn't get lost in overanalysis. As several Enron jurors stated after the verdict was read, they kept their focus throughout the trial on the personal harm done to thousands of people when Enron spiraled into bankruptcy. Several jurors, including a young mother and a school principal, spoke eloquently of the personal hardship they endured over the course of the lengthy trial.

Through their sacrifice, justice was served. Just as former Enron workers lost their life savings, their pensions and their jobs, and just as they continue to hurt, so now will Lay and Skilling know some of that pain. In the years ahead, the pair will have plenty of time to reflect upon it.

The verdicts also discredit the defense contention that Lay and Skilling presided over a healthy, ethical business operation blindsided by a small band of criminals led by former Chief Financial

Officer Andy Fastow and destroyed by a cabal of stock speculators and malicious reporters. Using this reasoning, all the former Enron executives who testified against the defendants were innocent dupes pressured by a malevolent prosecution task force into lying and admitting false guilt.

This despite exhaustive reportage following Enron's 2001 bankruptcy, stories that exposed the company's numerous flaws: its poisonous corporate culture, its embrace of unethical accounting techniques to bolster its public financial face, its self-serving and deceptive statements by company leaders. These sleazy practices were well-documented long before prosecutors drew them out in narrative from the people who had lived them at Enron.

Perhaps because their case was weak, defense attorneys repeatedly struggled with their clients' contradictory claims and inability to recall key issues. The government's closing statement by prosecutor Sean Berkowitz was powerful, incisive and controlled, while the defense frequently engaged in name-calling of both witnesses and government lawyers.

The low point came when Lay's counsel, Chip Lewis, yelled at prosecutor John Hueston, "Don't come to Houston, Texas, and lie to us." Houstonians concerned about the city's image being projected to a national audience surely winced at this unwarranted attack on a dedicated public servant and former civil rights lawyer. Even jurors rolled their eyes.

The two defendants came across in court much as they were said to have run Enron: with hubris, conveniently faulty memories and a tendency to place blame anywhere but on themselves. Their sales of massive amounts of the troubled company's stock, even as they sang its praises to employees and investors, conveyed a picture of callous greed. These captains started bailing out of their sinking ship long before it went down.

Houston needed closure after the civic trauma of the Enron debacle, and what the guilty verdicts have provided is an exorcism. Had the jury found Lay and Skilling innocent, it would have maintained the accommodating myth that nothing's wrong with the way the corporation did business. Such "creative" accounting might continue to be an option for corporate executives. Instead, they now know such maneuvers can result in an extended stay in federal prison.

Houston is often characterized as a city that tends to forgive and forget - sometimes too easily. Houstonians might forgive Lay and Skilling's wrongdoing, but with Enron, justice has been served at the highest level, and in a manner that will keep the lessons of its demise on business leaders' minds for a long time to come.

# APPENDIX CQ

## *THE ENRON VERDICT; THE GOVERNMENT; A federal strike at scandal in world of CEOs; Other cases were bigger, but Enron became a symbol, official says*

THE HOUSTON CHRONICLE

Friday, May 26, 2006

3 STAR EDITION

Section A, page 4

By David Ivanovich, Houston Chronicle Washington Bureau, Staff

WASHINGTON - The guilty verdicts handed down Thursday against former Enron Corp. executives Ken Lay and Jeff Skilling cap a slew of victories racked up by federal prosecutors in the wake of the nation's corporate accounting scandals.

Lay and Skilling join WorldCom's Bernard Ebbers, Tyco International's Dennis Kozlowski and Adelphia Communications' John Rigas in the chain gang of dishonored CEOs.

The fraud perpetrated at WorldCom was bigger than Enron, the greed evidenced at Tyco, perhaps, more blatant. But Enron, noted Deputy Attorney General Paul McNulty, was "the leading symbol of corporate scandal."

Years of prosecuting well-heeled CEOs has proven messy work. The government has faced mistrials, hung juries, even a U.S. Supreme Court decision overturning the conviction of one-time Enron accounting firm Arthur Andersen.

But the Lay-Skilling trial - "the granddaddy of them all" - was a "tremendous victory for the American investor," said Samuel Buell, a University of Texas law professor and a former Enron Task Force prosecutor.

"It was really the litmus test of whether our legal and regulatory system is capable of controlling corporate behavior," Buell said.

`Sweeping condemnation'

If the two former Enron CEOs hadn't been convicted, the string of other convictions "would have been lost in the shadow of an acquittal," noted Jacob Frenkel, former senior counsel at the Securities and Exchange Commission's enforcement division.

Thursday's verdicts, noted Harvey Pitt, chairman of the SEC at the time of the Enron collapse, represent "a very sweeping condemnation of the four-monkey defense: I didn't say anything. I didn't do anything. I didn't see anything, and I didn't know anything.

"It doesn't work," Pitt said.

Certainly, it didn't work for WorldCom's Ebbers.

Ebbers' attorney argued his client "did not have a clue" about the cooked books at WorldCom, an $11 billion accounting scam that brought the telecom giant crashing down.

Last July, U.S. District Judge Barbara Jones sentenced Ebbers, 64, to 25 years.

Ebbers was allowed to remain free while he appeals the verdict.

Tyco's Kozlowski and former Tyco Chief Financial Officer Mark Swartz weren't so lucky.

Convicted during their second trial of essentially looting the electronics conglomerate to fund their lavish lifestyles, the two were deemed too much of a flight risk and began serving sentences of up to 25 years.

Adelphia founder Rigas and his son Timothy were convicted of bank fraud, conspiracy and securities fraud. The 81-year-old John Rigas, suffering from bladder cancer, received a 15-year sentence, while his son got 20 years. Prosecutors wanted each man sent away for 215 years.

One big fish, former HealthSouth CEO Richard Scrushy, got away - at least for now. Prosecutors had managed to persuade 15 lower-level executives at the medical services company to plead guilty. But an Alabama jury found Scrushy not guilty of 36 counts of conspiracy, fraud, false reporting and money laundering.

Still, prosecutors have another shot. Scrushy is on trial in federal court again, this time accused of bribing then-Alabama Gov. Don Siegelman.

The Lay and Skilling convictions notwithstanding, prosecutors have had some of their most difficult times with cases connected to Enron's collapse.

Prosecutors won an obstruction of justice conviction against Andersen in 2002 after employees there shredded thousands of Enron documents.

But three years later, the U.S. Supreme Court overturned the verdict, concluding the jury instructions were so vague that jurors could have convicted the company for innocently destroying documents.

One-time Andersen partner David Duncan, who had overseen the firm's work for Enron, had pleaded guilty to obstruction of justice for his role in shredding Enron documents.

After the Supreme Court ruling on Andersen, prosecutors allowed Duncan to withdraw his plea, and the charges against him were dismissed.

A Houston jury acquitted defendants in the Enron Broadband Services case on two dozen charges but deadlocked on another 168 counts.

How these convictions will fare on appeal is an open question.

Florida International University law professor José Gabilondo views the Lay and Skilling verdicts as "consistent with the national mood of seeking retribution" against heads of failed companies.

"My sense is some of these may be reversed on appeal," Gabilondo said.

Two one-time leaders of Houston's business community are hoping today that Gabilondo is on to something.

# APPENDIX CR

*Letters*

THE HOUSTON CHRONICLE
Friday, May 26, 2006
3 STAR EDITION
Section B, page 8

By Mark F. Kidder, Dewey Olds, Rudolf J. Freund, Cathy Clark, Martha Kilman, James A. Wheeler, Norm Whitehouse

### *Convicted: Lay, Skilling*

### *It's unanimous*

AS a fellow Christian, I am incensed at the attitude Ken Lay still maintains, even after being found guilty.

He was unanimously found guilty by a jury of his peers on all the charges against him, yet he still loudly and proudly proclaims his innocence.

Simultaneously, he continues proclaiming his "love for the Lord."

He needs to remember that our Lord demands the truth, contrition and repentance.

Come on, Mr. Lay! Now that the game is over for his proclamation of innocence, it is absolutely shameful how he associates his pride, arrogance and guilt with "God's will."

Doesn't he realize these things are mutually exclusive?

I guess if he wants to become the unrepentant Pete Rose of the business world, he can go right ahead.

But I think he should keep God out of it.

- MARK F. KIDDER Conroe

*Ah, the sweetness*

FROM the perspective of an ordinary citizen who is actually at risk of getting ticketed for something as simple as jaywalking, the comedian Jackie Gleason said it best as to a description of what a guilty verdict for former Enron executives Ken Lay and Jeff Skilling actually feels like: "How sweet it is! How sweet it is!"

I commend each juror for the outstanding work the jury did.

- DEWEY OLDS Houston

*In tuxedos at parties*

FOR all who will now be saying that justice has prevailed in the jury's decision in the trial of Enron's Jeff Skilling and Ken Lay, it may be useful to note that for more than four years, the perpetrators of what are now being judged as criminal acts (and that affected the lives of thousands of innocent people) have lived a lifestyle that most of us could envy.

And since the judge has allowed both of them to post bond, they will continue that lifestyle for the foreseeable future.

- RUDOLF J. FREUND Montgomery

*If real news occurred?*

TWO corporate scoundrels are sentenced to jail, and you'd think it's the Second Coming by all of the news coverage. With all three local stations reporting in excess of four hours each, it gave the prima donnas and wannabes plenty of rope to swing from. Reporters seemed as giddy as children on Christmas Day with all of the airtime.

What would they do if there was a real story: What if Jesus, Muhammed or Buddha dropped in at Tranquillity Park?

Heaven help us.

- CATHY CLARK Houston

*Dixie Chicks, politics, shame*

*Ashamed they are from Texas*

NATALIE Maines popped off [about President Bush] just a few days after I bought a Dixie Chicks CD, which I never even played. I won't ever buy any more of their CDs, nor will I listen to any radio station that plays their songs. I also will not buy any products that are advertised on any station that plays their music.

When will entertainers - be they musicians, singers, movie or TV stars - understand that their politics are not appreciated by the public? They don't have a clue as to what the rest of us like or how we live our daily lives. I'm ashamed the Dixie Chicks are from Texas.

- MARTHA KILMAN Conroe

*He's free to ignore them*

THE U.S. Constitution allows the people of this country (such as the Dixie Chicks) to voice their opinions on our leaders or any other trivial thoughts they may have. It does not require anyone to listen to them nor does it inhibit our freedom to choose whether or not to financially support their beliefs.

I find it tiresome that those who gain a stage for singing or acting seem to think they have more rights than the rest of us as indicated by their whining when we choose not to listen to their music. The freedom of speech also includes the freedom to ignore that speech.

- JAMES A. WHEELER Sugar Land

*Persistent in choice*

THE effort being made by the liberal media to rehabilitate the Dixie Chicks is very interesting. These women - along with all U.S. citizens - are entitled to their opinions. The public is also entitled to its opinion of them, too. We have expressed it by not purchasing their CDs. The public's overwhelming distaste for the political opinions of this group is clear.

- NORM WHITEHOUSE The Woodlands

# APPENDIX CS

## *THE ENRON VERDICT; LOCAL OPINION; Verdict met with range of reactions; Some in area are surprised; others say `justice has been served'*

THE HOUSTON CHRONICLE
Friday, May 26, 2006
3 STAR EDITION
Section A, page 3

By Lynn J. Cook, Shannon Buggs, Betty L. Martin, Staff

Not so long ago, when Enron was riding high, the company's name and that of its head honchos Ken Lay and Jeff Skilling were ubiquitous in Houston.

The Big E capped the north and south ends of downtown with Enron emblazoned on the baseball stadium and two gleaming skyscrapers. Skilling's name became synonymous with energy trading as he tried to shake up and remake the entire industry.

The Lays, who were frequently spotted at La Griglia in River Oaks, contributed money for everything from the Holocaust Museum to the Katy YMCA. All were signs of the impact Enron and its largesse had.

At many of those places with Enron ties, the reaction to the fates of Lay and Skilling came just as swiftly as the 29 guilty verdicts read in federal court.

Natural gas brokers at the Galleria-area firm TFS Energy, including one former Enron employee, were in a betting mood before the verdict was read.

Five of them - who say they hate the term "trader" because of the nasty stigma Enron gave to it - were taking side wagers between each other while their computer screens flashed market data and the news anchors on their TV sets awaited the announcement.

Their general consensus: Skilling would get convicted and Lay would get off.

"Skilling's going down. Lay's going to the retirement home," Doug Kuni predicted before the verdict was handed down. "I'd have to receive 10-to-1 odds to take Lay going down."

Moments later when both men were found guilty on multiple counts, Kuni snapped on his headphones, turned on his microphone and broadcast to traders around the country: "Skilling guilty, Skilling guilty, Skilling guilty, Skilling guilty."

Then he turned to the guy sitting next to him, Bob Shiring, who worked in natural gas trading under Skilling for two years, and said, "Hey, that green cotton shouldn't in be your pocket right now."

While Shiring was paying up, broker Mike Nemer said, "Well, so much for believing your own BS."

Shiring, who left Enron in 1999, called the jury's decision "a message to the CEOs of the world."

"This reiterates the accountability of top management. This should make our capital markets stronger in the long run. This has rocked the energy trading industry like nothing I've ever seen in 20 years. This industry is a lot less fun than it used to be."

Moments after the verdict was read, Enron memo writer Sherron Watkins popped up on CNBC and the brokers yelled, "Turn it up!"

When Watkins said, "I wish Ken Lay had taken me seriously," Dan DeFoggi talked back to the TV set, saying: "I bet he does, too."

Across town at the Ken Lay YMCA in Katy, members used exercise equipment, splashed in the pool and registered for day camp as a television in the near-empty lounge area announced verdicts for the man for whom the $5.7 million facility was named.

The few patrons who wandered through had varying reactions on whether their Y should change its name.

"I don't want to work out in a place named after a criminal," Katy High School junior Andrew Wiechkowske, 17, said. "I think the jury was correct on all of it because he took money from so many people."

But Betty Childers, a Katy resident, said the YMCA should "leave the name," since Lay contributed money to build the facility on Westheimer.

Trazanna Moreno, a spokeswoman for the YMCA of Greater Houston, said the board of directors likely will address what to do about the name during a September meeting.

At least one patron in the Ken Lay Y's TV area didn't bother to look up from his newspaper as the verdicts were read and said he doesn't care if the facility gets a new name. "I'm not interested in that," said Herb Custer, 80. "I think it's all a bunch of hooey."

Though Houston is slowly but surely getting sanitized of all things Enron, Houston Mayor Bill White said in a written statement he hoped the verdict would close the book on the scandalous saga.

"People need to remember there were many thousands of hard-working Enron employees who did nothing wrong," said White, a businessman from the energy sector.

Houston's reputation is recovering, he said. "The most significant reputations that were diminished were those of a handful of unlawful Enron executives and a lot of Wall Street firms that touted the firm even while it was losing money on a cash flow basis according to its financial statements every year."

Raymond Plank, chairman of Houston-based Apache Corp. and a veteran of the oil patch, said he was "elated" at the trial's outcome. "Justice has been served. And this is going to meet the approval of corporate America," he said.

Despite all the rhetoric about how revolutionary Enron was for the energy industry, Plank contends the company was bad for business for a decade or more.

"When I met Ken Lay ... I could see how his charm could mesmerize people. "But in areas where our two businesses came together, I felt that he and Jeff (Skilling) - who I think was his hatchet boy - were sticking it to a significant segment of our industry," he said.

# APPENDIX CT

### *Guilty party acquitted by Enron jury*

THE HOUSTON CHRONICLE

Friday, May 26, 2006

3 STAR EDITION

Section B, page 1

By Rick Casey, Staff

It was a great relief to be acquitted by the Enron jury Thursday morning.

I refer, of course, to us in the media.

A key part of Jeff Skilling's and Ken Lay's defense was that the company was perfectly sound. It was killed not by their fraud but by, in addition to the perfidy of Andrew Fastow, a negative media frenzy that led to "a run on the bank."

The jury didn't buy it.

It wasn't reports in 2001 in Fortune magazine, the Wall Street Journal and other publications that led to the downfall of Enron.

It wasn't because reporters grew skeptical after Skilling left the company with the laughable excuse that he wanted to spend more time with his family.

It was, said the jury, because Lay and Skilling had conspired to hide from investors hundreds of millions in losses. Meanwhile, they raked in tens of millions for themselves.

### Faulty positive stories

In convicting Lay and Skilling, the jury found us not guilty of wrecking Enron with faulty negative stories.

But I've got a confession to make. We were guilty of something Jeff and Ken didn't charge us with: years of faulty positive stories.

We were not responsible for the collapse of Enron. But we were, partially, responsible for its buildup.

Most people think the media love only negative news: sex scandals, the downfall of the rich and powerful, heart-rending tragedies.

This isn't true. We also love the really, really good news stories. The almost-too-good-to-be-true stories.

The problem is, they often turn out to be too good to be true.

### Let our skepticism down

The inventor's machine doesn't really get 300 miles to the gallon. The school district doesn't really get 70 percent of its low-income students into college. The 18-year-old Harvard freshman didn't really write that sparkling, original novel.

Give us a good enough good story and we'll let our skepticism down.

So, in the months and years leading up to Enron's 2001 implosion, we engaged in a positive media frenzy:

Investor's Business Daily gushed that "The Internet is the new oil. And venerable oil firm Enron Corp. hopes to strike a gusher in today's new cyber-economy. Two months ago, the $40 billion Houston-based powerhouse detailed a program to build broadband Internet service. Since then, its stock has spurted like a new Internet offering, climbing 72 percent since Jan. 1." (2000)

The Financial Times named Enron the "energy company of the year." (2000)

Time magazine, speaking of a joint venture between Enron and Blockbuster that folded soon after, wrote, "At a time when so many old-economy companies seem helpless against the dizzying pace and technology of the digital age, Enron is demonstrating why Fortune magazine keeps voting it the most innovative large company in America." (2000)

The Economist: "a highly successful energy brokerage." (early 2001)

I could go on, especially if I reviewed the cable business channels, but New York Times economics columnist Jeff Madrick summed it up well in an interview on PBS: "The media in many ways told the biggest whoppers about this company that could be told. ... But what the media also did, Enron apart, was create an environment, an attitude about the new economy that was so enthusiastic and so beyond a true economic foundation, that you could believe almost anything."

And it must be admitted, the Houston Chronicle did not cover itself with glory. We cheered at least as loudly as others. (I think we've reformed. Our coverage since the criminal investigations began, led by Mary Flood, has been nationally recognized.)

We had some, um, excuses. Lay was a compelling figure when he was speaking as a likable visionary, not only for Enron but also for Houston as a creative center, meanwhile showering the city's arts and charities with millions of dollars of his own and Enron's. Who wanted to think of him as a Ponzi schemer?

Skilling wasn't as charming, but he was very adept at making anyone - employee, stock analyst, reporter - feel stupid who didn't understand his opaque explanations of how the business worked.

What's more, we didn't have what federal prosecutors had: subpoena power and the ability to shorten the prison sentences of cooperating witnesses.

It would have taken some very good reporting to burst Enron's shiny bubble. But that very good reporting did not emerge until very late.

# APPENDIX CU

## *Guilty Pleasure*

TEXAS MONTHLY
July 2006
Features, page 128

By Mimi Swartz

During a break in the closing arguments at the Enron trial, in one of those awkward coincidences that private people who become unwilling public figures probably detest, I found myself in the restroom of the federal courthouse with Linda Lay. I was waiting to wash my hands behind her, and she caught sight of me in the mirror, bowed her head, and hurried to finish her task. By then she had lost any resemblance to the perky, chic combatant who had defended her husband on the *Today* show more than four years earlier. That flawlessly highlighted flip hung limply, and the lines in her face all headed in one direction: southward. She had the anxious, furtive air of a hunted animal. "Sorry," she said, meeting my eyes briefly as she scrubbed. "So sorry." She wasn't the rich wife of a corporate mogul anymore but instead a former secretary who had lost everything she had worked for and wasn't sure of her place in the world. In other words, she too had joined the ranks of those dispossessed by Enron's collapse. I supposed this was what it meant to see justice done, but I took no joy from it. P In the end -- the ostensible end being May 25 -- the Enron verdict was like the death of a close relative who had long ago been diagnosed as terminal: inevitable but still shocking in its power and finality. On the ninth floor of the courthouse, in a cavernous, paneled, fluorescently lit courtroom that had become home to so many for nearly four months, the five-year drama starring Jeff Skilling, Ken Lay, their defunct company, and the city of Houston came to a close, with guilty verdicts that were surprising only in their swiftness (the jury came back on this supposedly impossible case in five days) and scorched-earth completeness (Skilling was found guilty on nineteen counts of conspiracy, securities fraud, and insider trading; Lay was convicted on all six counts of conspiracy, wire fraud, and securities fraud). P Just after the jury delivered its verdict, U.S. District judge Sim Lake, pale, thin, and scrupulous throughout the trial, delivered his judgment on the separate, four-day bank fraud trial that had begun for Lay immediately after the jury retired to deliberate. Impervious to Lay's ashen hue and his wife's wrenching sobs, Lake closed up shop like a judiciously polite man who was finally unable to contain the disgust he had concealed since the proceedings began on January 30. "As to charges 38, and 39 through 41 -- guilty," he said dismissively, as if he couldn't wait to get Lay and what was left of Enron out of his sight.

The same could have been said of Houston. No matter what happened -- say, the redemptive rescue of Katrina evacuees -- the shame and humiliation surrounding the implosion of the city's most powerful, glamorous business remained an open wound, the healing of which was both deeply desired and, considering various outcomes, deeply dreaded. But when the verdicts were finally handed down on what was, serendipitously, the last day of school, a collective giddiness swept over Houston -- though it was hard to tell whether it was born of the guilty findings themselves or the exoneration of the city in which the drama had been set. Now we had permission to move on.

In fact, by the next day, the bustling media city that had tented itself in front of the courthouse for months was gone, as were the TV stations' satellite trucks, with their thick black cables snaking up the sidewalks. It was almost as if the whole thing had never been, which is exactly the way a lot of people in Houston would prefer to think about Enron from here on out.

Of course, this was not always the case. The seductiveness of the Enron Bubble dates back to the good old Enron, the one that was described by just about everyone as a sleepy pipeline company that transformed itself, in about a decade and a half, into a global colossus -- the one that *Fortune* would probably love to forget it touted as the country's most innovative for six straight years. Enron's mirrored office towers still shimmer in the sunlight, and the clever halo connecting the two buildings still cries out for some novel application. But no one looks purposeful striding out of the Smith Street skyscraper anymore; there aren't even bankruptcy lawyers racing to their limos to make their flights back to New York.

The early Enron story always seemed to me more Midwestern than Houstonian, an account of a company's migration from Omaha, Nebraska, to Texas and the value shifts that ensued. Ken Lay, the CEO and chairman; his old college chum Rich Kinder, the president; Jeff Skilling, who succeeded Kinder; Skilling's nemesis Rebecca Mark, the CEO of Enron International; Ken Rice, the infamous ladies' man who headed Enron Broadband Services -- they all came from modest backgrounds in the heartland, and for a while they looked like a great alternative to the careless wildcatters who had driven the city's economy into the ground during the oil bust. Enron people were modest, serious, and hardworking. They preferred the quiet neighborhoods around Rice University to the flashiness of River Oaks. They gave generously to charity; well-heeled executives were required to give a minimum of 1.2 percent of their base pay to the United Way. They didn't smoke inside their building, and they got a lot of exercise; in the early days, Lay posed for business magazines in his jogging clothes. In that progressive, understated way, he made the bourbon-and-branch-water-drinking oil and gas executives on Louisiana Street -- Don Jordan, who ran what eventually became Reliant Energy, for instance -- look antediluvian. Enron was the company, the only company, that could possibly lead Houston out of the ashes of the bust.

But Lay was also a man of grave ambition who hired people in his image, and it wasn't long before the grousing started about just how much Enron expected for its savior status. Anyone who recalls the "Star Wars: The Magic of Myth" show at the

Museum of Fine Arts, Houston in 2001 might recall that the sponsor got almost as much, if not more, billing than George Lucas. Enronians -- pronounced like "Etonians" -- were not just the bullies of the gas market (one-sided contracts tended to be of the take-it-or-leave-it variety) but the bullies of the political scene in Austin, Washington, and wherever else the company chose to expand its influence, pushing so hard to get their way that George W. Bush, then governor of Texas, once referred to Lay in a private meeting as "the turd in the punch bowl." Enron executives had the bad habit of lording their brilliance over lesser men: "I hope someday the [Houston] *Chronicle* is as good in its field as we are in ours," Skilling told the paper's then editor, Jack Loftis. The modest Midwestern visionaries, it seemed, adapted quickly to old-fashioned Texas braggadocio.

As Houston recovered, and the eighties turned into the nineties and the millennium approached, everyone in town, and beyond town, wanted to work at Enron. Who cared if you were toiling 24/7 when you were building the future, getting incredibly rich, and anointed as working for the smartest company on the planet?

"A person has a limited number of bad decisions he can make in his life," a local businessman told me at a dinner party early in the trial, and he was speaking of Lay, whom he had considered a friend. What he was referring to was the moment in 1996 when Lay let Rich Kinder leave the company. This event has been much chronicled in books and articles: Lay's former secretary was romantically involved with Kinder; Kinder was tired of running the company while Lay got all the glory; Lay felt betrayed by his former friend's attempt to undermine his power. Now, with hindsight, it is very clear that the company was doomed the day Kinder left to form his own pipeline company, known today as Kinder Morgan. (In what has to be the best revenge scenario since the defeat of the Mexican army at San Jacinto, Kinder's company, which, coincidentally or not, he announced he planned to take private three days after the Enron verdict, was number 243 on the 2006 Fortune 500 list; its revenues are up 23 percent since 2004.)

Kinder was -- strange but true -- one of the few people at Enron who really cared about running a business day-to-day, about converting ideas into reality and producing real profits for investors. Everyone else was enthralled with the trappings of corporate life: meeting with presidents, for instance, or being profiled in fawning business books like Gary Hamel's vapid *Leading the Revolution* (chapter 4: "Be Your Own Seer"). Kinder's departure coincided with the beginning of chief financial officer Andy Fastow's shenanigans; Rebecca Mark's unchecked spending on foreign plants and pipelines, which would add to the company's debt load; and Skilling's even more costly investment in "intellectual capital" -- a.k.a., the virtual businesses that never made a dime, like Enron Energy Services and Enron Broadband Services. As the prosecutors would point out during the trial, Enron was really a trading business disguised as a diversified corporation, and it was the traders who routinely saved the company from the brink of disaster at the expense of the state of California, among others. That is, until Wall Street got suspicious.

In the years before Enron's collapse, a great many people in Houston had their suspicions, just as many people within Enron knew there was something not quite right about the company. But that's all they were: distant early warnings that few were in the mood to heed. You would go to a dinner party or stop for a chat with a neighbor and someone might shake his head and describe Enron as "a house of cards." But the complaining was usually chalked up to envy, because if you weren't apart of Enron, you might find yourself feeling inferior -- poorer, dumber, and lower class at a time when the divide between rich and poor was ever widening. If Lay and Skilling had anything in common, it was their belief that perception was reality, and they were, for a time, masters at shaping Enron's exalted place in the world. (This was a company that paid an image consultant to gussy up its secretaries.) When things started looking grim, no one wanted to tell them -- or could tell them -- that reality could come back to bite you and change perceptions in the most meteoric and calamitous way.

Anyway, by 2000 or so, the city was an Enron captive, utterly taken in by ages-old (for Houston) promises of progress, wealth, and grandeur. The big law firms were sharing in the bounty, as were the banks that made the loans that kept the company afloat. And, of course, there was Arthur Andersen, which billed Enron somewhere around $ 1 million a week. But there were also the real estate brokers who settled the young executives in Southampton, the plush, understated neighborhood Andy Fastow named a deal after. There were the tony private schools -- St. John's and Episcopal -- that gladly took the promising Enron progeny and the hospitals and museums that named nifty spaces in honor of Enron donors. The meta-ironic Art Guys tweaked the interior of Skilling's guesthouse, creating a trash-filled fish tank designed to evoke Buffalo Bayou on a bad day; the local Porsche and BMW dealers lusted for the day the traders got their bonuses and went trawling for new wheels. ("They knew exactly what they wanted," an executive at one dealership told the *Washington Post*. "And it was fun, because it took about two minutes to do a deal.")

If Enron was, in Skilling's mind, a company of ideas -- of intellectual capital -- it was also a company of consumption, and the rest of Houston was happy to feed its nearly insatiable demands. And while Enron made Houston rich, it also made Houston modern and hip in the way it had always wanted to be. The city thrummed with loft living, sushi bars, BlackBerrys, and art by the most cutting-edge creators -- from places like Sweden! Who could resist?

And then, depending on your catastrophic verb choice, it collapsed, exploded, imploded, or evaporated during the unseasonably cold and rainy days of December 2001, when Enron was forced to file for bankruptcy. The weeping was carried live on all three local networks, as the employees -- given only $ 4,000 in severance -- permanently exited the building, using their $ 700-plus Aeron chairs to carry their belongings. The Enron Bubble had burst, but the residue was a sticky, gooey, roiling mass of resentment that was just as compelling as the good old days of greed. Now Lay and Skilling and those who had been paid enormous retention bonuses to stay on weren't heroes but villains.

Which really shouldn't have surprised anyone. Enron was, just about from the beginning, a company of carnivores. It was every man for himself; these were people who took as gospel the work of Ayn Rand. Even in the depths of despair, many of the former employees were nothing if not resourceful: One created an anti-Enron T-shirt company overnight ("I Got Lay'd Off"), and another immediately rented a hotel room and began conducting interviews for the first of many Enron books. The classic Texas nightmare -- outsiders arriving and passing judgment on our intelligence -- was made real, as reporters from the *Post,* the *Wall Street Journal,* and the *New York Times,* as well as from England, Scotland, and India, descended on Houston like an invading army, along with the Justice Department's Enron Task Force, whose members -- hint, hint -- were fresh from investigations of mobsters and major drug traffickers. With this Texas-size collapse -- I'm sure someone called it that -- Houston, twenty years after the insidious oil bust, was staring into the abyss once more.

Though the fall of Enron was billed as a complicated story, largely because Enron had created its own vocabulary to put ever more distance between its executives and ordinary folk, the company failed for fairly simple reasons. Once Enron faltered and began systematically obscuring its true financial condition, the investor community, aided by journalists and short sellers, took note; that actual crimes were being committed within the company took a little longer to sort out and to absorb. It was hard to believe that the corporate executive whose kids carpooled with your kids or who coached your neighborhood Little League or sat just a few pews away in church was a felon-to-be. But throughout 2003 and 2004 the drama of the bankruptcy morphed into a story of crime and punishment, as a West University dad or someone from your prayer group was led off in handcuffs. First it was lower-level types, but soon it was Fastow, and then Skilling, and then, finally, Lay, who, awaiting bond, cheerfully demurred when other prisoners asked him for investment advice.

At least partly in self-defense, Houston became a city of I-told-you-so's, with the social order rearranged accordingly. Lay, who celebrated his wife's January 2001 birthday with a group of friends aboard a rented yacht called the *Amnesia,* spent New Year's Eve 2002 handing out canapes at his sister's condo. Meanwhile, blue-chip investment counselor Fayez Sarofim, previously dismissed as a dinosaur for refusing to put his clients' money in Enron because he couldn't understand its balance sheets, was once again elevated to godlike status. Ditto Rich and Nancy Kinder, who took over the Lays' former role as major fund-raisers for George W. Bush during his reelection campaign.

Like the inhabitants of the most industrious, self-preserving anthill, Houston rallied and, as it had during the bust, diversified. The legal community -- from bankruptcy lawyers to our august criminal bar -- shifted into high gear, representing those who might or might not be prosecuted. As the trial of

Lay and Skilling approached, the question of the hour became "Are you on the witness list?" The thrill did not last long, as former executives racked up tens of thousands of dollars -- in some cases, hundreds of thousands -- in legal fees while answering questions from various and sundry investigators. The fear that they could suffer the fate of Jamie Oils -- the Dynegy executive sentenced to 24 years in prison for relatively minor infractions while higher-ups took deals -- was a major incentive to those who agreed to plea bargains or willingly stayed silent instead of speaking up for Lay or Skilling. The bullies were now the bullied and, like most bullies, folded in the face of a larger threat.

For observers, the bad Enron could be just as enticing and lucrative as the good Enron. It was during this time, in fact, that, like a horde of others, I began researching a book on Enron (with company whistle-blower Sherron Watkins), and there were never more engaging, intelligent interview subjects than those who had worked for the company and were trying to make sense of what had happened there. Even so, two things struck me early on: No one could ever give me an example of Skilling's much-touted brilliance, and almost no one -- maybe a couple of people out of several hundred -- ever offered to pick up a check. As it turned out, both were telling.

The trial was one of those galvanizing civic events, like the Rockets winning the championship or, well, the bust. "I'm on pins and needles," my dermatologist said to me. As drama, even the previews were pretty thrilling, particularly when Richard Causey, Enron's doughy former chief accounting officer, pleaded guilty at the last minute rather than face trial with Lay and Skilling. This move promised that the trial would be significantly shorter and far more interesting -- easier to follow, that is -- because it wouldn't hinge on accounting. (Causey's plea also had the effect of removing Reid Weingarten, arguably the best cross-examiner, from the pack of defense attorneys -- no small thing as it turned out.)

In anticipation, a lot of Houstonians seemed to forget the part in high school civics about trials being open to the public. "You can just . . . walk in?" I was asked myriad times. Stopping in became part of the social fabric of a certain stratum of Houstonians; people made dates to have lunch and visit the trial and, as the months wore on, became pickier about whom they saw, as in, "I'm waiting for Fastow," or "I'm going to the Skilling cross but not the direct." There was much handicapping of lawyers among the famously competitive local trial bar. Prosecutors criticized the task force; defense lawyers dumped on Lay's choice of Mike Ramsey, noting that he had little or no experience with white-collar criminals.

The courtroom itself was a far more sobering scene. Lay was almost always gray and stiff, while the young cadre of prosecutors had the ruthless, focused miens of contract killers -- the kind of people Lay or Skilling might have recruited in happier times. Skilling's swaggering, sharp-tongued attorney Daniel Petrocelli provided the only comic relief, though his loyalty to his client -- the two were so close that people began making *Brokeback Mountain* jokes -- was a constant reminder of what was at stake. (He, not the Houston police officers and their sable-hued mounts, often seemed to be Skilling's real bodyguard during the crushing morning and afternoon forays to and from the courthouse.)

On the right side, behind the defense table, sat various members of the prosecution team, including FBI agents, while on the left, behind the prosecution table and closer to the jury, sat members of Lay's and Skilling's families. Lay's loyalists often included a cluster of blondes -- his wife, his publicist -- who sat on Tush Cushes placed there by an assistant before their arrival. Behind them sat the press: representatives of the *Times* (columnist Joe Nocera came only once, for Skilling's testimony, as did Kurt Eichenwald, the author of *Conspiracy of Fools,* who declared of Skilling, "He's toast," and exited after only a few hours); *Fortune's* Peter Elkind and Bethany McLean, the authors of *The Smartest Guys in the Room* (the latter, with her Botticelli face and an assortment of glamorous heels, inevitably left a trail of poleaxed men in her wake); and John Emshwiller, of the *Journal,* who, with Rebecca Smith, wrote *24 Days.* The *Chronicle* -- which missed the story in the early years, when its management was more dazzled by Enron -- was there in force, led by the indomitable, flame-haired Mary Flood, who brought her own plaid cushion, and Loren Steffy, whose acrid anti-defense blog became required reading for everyone involved.

Some days, I also caught sight of Carrin Pat-man, the wife of former Enron general counsel Jim Derrick, looking as lonely and anxious as a child. Other times I'd spy Linwood Olson, whose husband, John, now a successful hedge fund manager, was the analyst driven out of Merrill Lynch years ago by Lay because he raised questions about the company. The cool, blond Linwood had almost perfect attendance, causing Lay to remark that she "knew more about this trial than anybody." Maybe Lay should have recalled Stephen Vincent Benet's instruction to "make war on the men. The women have too long memories."

For most of the trial, it was virtually impossible to tell how things were going. The prosecution would score a few points off the "Skilling ordered me to fudge the numbers" backboard or the "Lay knew the stock was tanking but pumped it up anyway" jump shot. The defense just as often came back with claims that the prosecution's witnesses had made deals to save their own skins, but the jury was united enough in its understanding of Enron to prevent Petrocelli from making much headway when he tried to impeach the CEO of Enron Energy Services, for instance, for being ambitious.

Andy Fastow -- like Garbo, he didn't talk until he had to -- was bracing in his honesty. In 2003 he had issued a firm and forthright "not guilty" plea to the court when he was indicted; three years later, thinner, grayer, and tearier, his sibilance betraying his nervousness, he now robotically recited phrases like "I pled guilty because I am guilty, and I thought that decision would be in the best interest of my family." He also introduced the jury to some wonderful locutions -- the "bear hug" he supposedly received from Skilling that guaranteed his side deals would never lose money and the phrase "open the kimono," a slightly sexual term for business transparency. Recapitulating the transactions that made him famous -- "I was just trying to cheat my limited partners," he said, when quizzed about the questionable value of a particular deal -- he was that rarest of beings: an honest crook.

You had to wonder how Skilling felt, watching the march of betrayers -- men he'd mentored and made very rich -- testifying against him, but he was seen to call only one of them "an asshole" outside of court, and that was in a whisper. Mostly, he held his own on the stand, splitting about a zillion hairs and rarely answering a question directly. Yes, he lost his temper when the prosecutors tried to elicit conflict-of-interest testimony about his and Enron's investment in the photography business of his then girlfriend -- the absence in the courtroom the next day of the woman he subsequently married, Rebecca Carter, suggested Skilling hadn't told her about the fling -- but the more important howlers were about Skilling's passion for Enron's foreign assets. If you were employed at Enron, or you studied the company, you knew he spent an enormous amount of time plotting to bury alive his interoffice competitor Rebecca Mark and her foreign businesses. (Still, he got sympathy votes from the peanut gallery when it was learned that his attorney intended to call his barkeep as a character witness. Cooler heads later prevailed, and Steve Zimmerman, owner of Zimm's, did not appear.)

But it was Lay's testimony, just weeks before the verdict, that turned the trial in the prosecution's favor. The man who was previously a master of PR seemed incapable of donning his familiar, friendly game face during the most crucial contest of his life.

He was, instead, downright dyspeptic, bickering not just with the defense but with his own attorneys. He embodied the imperial CEO, asserting, for instance, that he sold Enron stock only as a last resort. Alas, prosecutor John Hueston showed that Lay sold millions of dollars in company stock to meet margin calls amounting to only hundreds of thousands of dollars. Hueston further showed that Lay could have liquidated other funds or sold real estate to cover those calls -- or, like ordinary people, he could have cut his lavish spending to reduce the amount of Enron stock he was "forced" to sell. After Lay complained that his expensive lifestyle "was difficult to turn on and off like a spigot," Hueston countered that while the company was sinking into serious trouble, Lay shelled out $ 20,000 for antiques in Majorca ("It could be my wife found something she liked") and spent $ 4,700 for two nights in France and $ 32,000 to reserve six nights in Deer Valley, Utah, for a ski vacation the following year.

It was in the evenings, after days of testy exchanges and damning financial revelations, that it dawned on various Houstonians that the conventional wisdom -- Skilling would go to prison but Lay would skate -- might be all wrong. Indeed, you could sense a different outcome in the desperation of Lay's defense team during closing arguments, when a dispirited Mike Ramsey told the jury that a vote of "not guilty" did not necessarily mean "innocent" but instead "not proven," and his high-strung colleague Chip Lewis -- looking for one rogue juror -- tried to play the carpetbagger card. "Don't come to Houston, Texas, and lie to us," he screeched at the prosecutors, oblivious to the fact that a great many people in Houston, inside and outside the courtroom, believed the real liars were at the defense table.

The Monday morning quarterbacking began the Friday after the verdict was handed down. Some lawyers believed the case was decided when Judge Lake allowed the prosecutors to pursue a "willful blindness" charge, alleging that Skilling and Lay knew about but chose to ignore wrongdoing within the company. Others believed the defense lost when they abandoned their earlier stance of hiding behind the skirts of the lawyers and accountants (i.e., Vinson and Elkins and Arthur Andersen signed off on all of Enron's moves, so they had to be okay). "Their case was doomed when they locked themselves in the position that it was a good company that failed because of bad publicity, short sellers, and Andy Fastow," lawyer Philip Hilder told me. "Lay should have admitted he was an idiot?" I asked. "Yes," he said.

A few days before the verdict was announced, I met Sherron Watkins for lunch, and I was struck by how much she reminded me of some of the no-nonsense women -- eight of them in all -- on the jury. Like Watkins, many of those chosen to serve were of a certain age, and though they displayed a terrific compassion toward the defendants, they had lived long enough to know when they were being played. But there was something else: On the whole, the ordinariness of these people was striking. No one was dressed to the nines or looked as if she cared about hobnobbing with world leaders or blowing the minds of Fortune 500 executives. They just wanted to do a good job and had the right to hope for as much from people far richer and more powerful than they. To paraphrase Carl Jung, what we deny will come back to us as fate; Lay and Skilling were so frightened of being ordinary men that they drove themselves headlong toward destruction, and they took a lot of well-intentioned people with them. If that wasn't really illegal, well, they got their just desserts in the form of global humiliation, their personal bankruptcies -- spiritual if not yet literal -- on display for all to see.

## APPENDIX CV

## INTERVIEW WITH JILL FORD:

I still feel sort of like he was someone I knew ... Once I saw the actual "Ken Lay has died of a heart attack" I was really upset. I was sad, you know .... I know I'm not one of their favorite people right now but I'm sorry and I won't be able to tell them that ... I think he was trying his best to bring the company back, but you can't break the law to do that. There is a side to him that upsets me, that he, you know, did so much for our city and for downtown, you know, and a lot of that's going to be forgotten. He's going to go down as a criminal. ... It had to have been extremely stressful because it was stressful on me and I was feeling, you know, extremely stressed out. ... I feel bad for the people who really wanted to see him go to jail, that they needed the closure and they're not going to get it. You would hope that would be enough that you know, we came back guilty.

## APPENDIX CW

### *End of the road; Skilling's sentencing brings closure to the Enron scandal, the symbol for '90s corporate greed.*

THE HOUSTON CHRONICLE

Tuesday, October 24, 2006

3 STAR EDITION

Section A, page 8

By Staff

Despite a decisive jury verdict that they committed crimes that contributed to the collapse of their company, the past masters of Enron maintained to the end that the second largest bankruptcy in U.S. history was due to a thieving chief financial officer, scheming stock analysts and bloodthirsty business reporters.

Despite extensive evidence to the contrary, Enron's late chairman, Ken Lay, took that stated belief to the grave when he died of a massive heart attack just weeks after the verdict. His companion in the dock, former CEO Jeff Skilling, will take his protestations of innocence to a federal penitentiary when he begins serving a 24-year, four-month sentence after being convicted of 19 counts of conspiracy and fraud. U.S. District Judge Sim Lake also ruled Monday that Skilling must turn over $45 million in assets to be paid to Enron victims.

If he served the full sentence, Skilling would be 76 when released. He will remain under house arrest and wear an electronic monitor on his ankle until federal authorities decide when he will begin serving his time, likely in a North Carolina medium security prison. The judge ruled that Skilling will be jailed while he appeals his conviction.

Before hearing his sentence, Skilling told Lake that although he feels remorse at the deaths of friends and the suffering of his family. "I am innocent of these charges. I am innocent of every one of these charges," he said.

Skilling's sentence is far longer than the six years meted out to Enron's disgraced former chief financial officer, Andy Fastow, who admitted to the theft of millions of dollars. Skilling's unwavering denial is in marked contrast to Fastow's tearful apology to the employees who lost life savings and jobs.

Federal prosecutor Sean Berkowitz told the court that Skilling failed to exhibit "any sense of personal responsibility or personal accountability for what happened." Unlike Fastow, Skilling went to trial rather than pleading guilty and cooperate with prosecutors.

Although Skilling's lawyer argued for a lighter sentence, Judge Lake said justice required a severe penalty. "As the many victims have so eloquently testified, his crimes have imposed on hundreds, if not thousands, a life sentence of poverty."

Those employees called for a punishment that fit Skilling's crimes. Chronicle business columnist Loren Steffy cited the statement of a former Enron worker addressed to Skilling: "While you dine on chateaubriand and champagne, my daughter and I clipped coupons and dined on leftovers.

"Now," the worker told Judge Lake, "it's his time to be robbed of his freedom to walk the earth as a free man."

Perhaps it is fitting that the perpetrators of one of the largest business scandals in American history would go down maintaining Enron's famous hubris in the face of public and judicial condemnation. The severity of Skilling's sentence should make corporate executives think twice before repeating Skilling's deeds.

Now the thousands of hardworking Houstonians who lost so much to Enron's demise can get on with their lives, knowing the guilty have been punished to the full extent of the law and Skilling's high flying days of chateaubriand and champagne are drawing to an ignominious close.

# SUPPLEMENTAL APPENDIX

Supreme Court, U.S.
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No. 08-1394

IN THE
# Supreme Court of the United States

JEFFREY K. SKILLING,
*Petitioner,*

v.

UNITED STATES OF AMERICA,
*Respondent.*

**On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

## SUPPLEMENTAL JOINT APPENDIX
**[Pages 1sa - 244sa]**

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# SUPPLEMENTAL APPENDIX

# SEALED EXCERPTS FROM TRIAL TRANSCRIPT

## Voir Dire

## January 30, 2006 1:03pm

Q. **[THE COURT]** You were asked a question about, "Have you ever been charged for any type of offense." And this part of the transcript will be sealed beginning with this question and to the answers to this question.

Can you tell us a little bit about what charge you had?

A. **[JUROR]** Yeah. That happened when I was 16. It was two of my buddies and us, we got into a cafeteria and took some food, and that was it. I did community service for it.

Q. Were you prosecuted in a court?

A. Yeah. Yeah.

Q. Do you remember what court it was?

A. It was Clark County. It's up in Washington State.

Q. Was it -- was it a district court or municipal court?

Do you remember?

A. I don't know. I have no -- I don't know. It's too long ago.

Q. What was the punishment?

A. I got probation, I think six months -- and I got early release for that -- and like 90 hours of community service.

Q. Did you serve the probation successfully?

A. Yeah. Yeah.

Q. Did anybody ever move to revoke your probation?

A. No. No.

Q. I gather that you're a voter. Is that correct?

A. I've actually never voted before.

Q. Are you registered to vote?

A. I believe so, yes.

Q. Because that's where we get this data.

Do you know if that was a felony offense at all?

A. I think it was. And the lady that called from here and she asked me if it was. I told her I think it was, but she said it didn't sound like it was since the punishment was so little. I don't know.

Q. Do you --

A. I don't know if it goes off the dollar amount.

Q. Well, a felony is a -- is punishable imprisonment of a year or more.

A. No. I've never been in prison. No.

Q. Did you face punishment of a year or more?

A. I don't think so.

Q. Is there anything about your experience that you think would prevent you from assuming that the defendants are innocent?

A. Their innocence?

Q. Yes.

A. They should be able to until proven guilty.

Q. Well, I know. But is there anything about it which you've heard or read that would cause you any difficulty in assuming that they are innocent?

A. No. No.

Q. **[MR. PETROCELLI]** I just have one question, Judge.

Thank you very much. Based on what you read in the media when you said you thought a majority of people thought the defendants did something wrong, would you have trouble -- if the evidence showed that they should be acquitted, would you have trouble acquitting them and then going back to your work and family knowing that you acquitted these people?

A. No. No.

Q. Okay.

A. **[MR. STRICKLIN]** No further questions, Your Honor. Thank you.

Q. **[THE COURT]** Thank you very much.

A. **[JUROR]** All right. Thank you.

Q. **[THE COURT]** Counsel. And the transcript is going to be available to everybody, except on very rare situations like that where I think it invades the privacy.

Q. **[MR. PETROCELLI]** Sure.

**Voir Dire**

**January 30, 2006 3:33pm**

Q. **[THE COURT]** Thank you, ma'am.

Number 104. Thank you for your patience. We'll try to be expeditious. There are no right or wrong answers.

There was a question here, "Has anyone ever -- close to you ever had a negative experience dealing with law enforcement officers," and you put, "Private." I'm going to seal the record from here on about this question because we need to ask you about it. No one will know except for the people standing here. It will not be in the public transcript. Can you tell me what negative experience someone had with law enforcement?

A. **[JUROR]** My father served time in the Oklahoma Prison System.

Q. And what was that for?

A. Robbery.

Q. How long ago?

A. 45 years ago. He's pacing the floor at the moment thinking somebody is going to dig this up on him.

Q. We're not -- nobody here is going to tell anybody. This is going to be confidential. That's the reason I've said what I said earlier to the media. Do you think he got a bad deal?

A. No. He was guilty. He pled guilty. He was guilty.

Q. Is there anything about that experience that would prevent you from being fair and impartial in this case?

A. Oh, no.

Q. Okay.

**Voir Dire**

**January 30, 2006 4:48pm**

Q. **[THE COURT]** Is there any objection to the jury as constituted?

A. **[MR. SECREST]** Yes, Your Honor. And I'd ask that this part of the record be sealed so it's not publicly disseminated that we're objecting to the seated juror.

But for the record, in light of the Court denying our challenges for cause to Jurors 29, 61, 74, 76 and 101, and the Court's refusal to grant us an additional peremptory challenge for each of those challenges for cause, we have now had to use six peremptory challenges. And if we had six additional peremptory challenges, we would strike Juror Number 20, 38, 63, 67, 78 and 84. So we respectfully object to those venirepersons being seated as jurors.

Q. Objection is overruled.

A. **[MR. PETROCELLI]** And we join in that objection, Your Honor. And, for the record, we also add the objection that we were not permitted to fully voir dire each of the jurors.

Q. **[THE COURT]** Okay. Well, I disagree with that, but the objection is overruled.

A. **[MR. SECREST]** Will the Court file my objection?

Q. **[THE COURT]** Yes.

A. Thank you.

Q. Did you have any objections?

A. **[MR. STRICKLIN]** No objection. We're pleased with the jury, Your Honor.

Q. No Batson challenges?

A. No Batson challenges.

Q. Okay. Have a seat.

JUROR QUESTIONNAIRE

10
(For Official Use Only)

This form helps the court select a jury. Please answer all blanks *in print and in black ink*. If the question does not apply to you, please write "NA" in it. The lawyers are entitled to information about potential jurors, but if you choose not to answer a question for private reasons, please draw a single line through it.

| | | | |
|---|---|---|---|
| Name<br>Douglas Guy Baggett | Age<br>55 | Birth Place<br>Pasadena, TX | Religious Preference<br>Methodist/Catholic |

| | | | | |
|---|---|---|---|---|
| City of Residence<br>Houston | Years There<br>37 | Employer (ex if retired)<br>Shell Oil Co. | Type of Work<br>Legal Administrator | Years<br>6 |

| | | | | | |
|---|---|---|---|---|---|
| Children's Ages & Sex | 19 | | | | Grown Children's Type of Work |
| | M | | | | |

| | | |
|---|---|---|
| Marital Status<br>Married | Spouse's Name<br>Janice | Spouse's Birth Place<br>Pasadena, TX |

| | | |
|---|---|---|
| Spouse's Employer<br>Housewife | Type of Work<br>Housewife | Years<br>30 |

| | | | |
|---|---|---|---|
| List governments that you & relatives have worked for. List law enforcement but not the military. | Who?<br>None | Governmental Unit | Type of Work |

| | | | |
|---|---|---|---|
| Have you served in the military? | Yes [✓ No] | Branch & Highest Rank | Years |

| School Level | School and City | Subject Studied | Degree |
|---|---|---|---|
| High School | Pasadena High, Pasadena TX | Math | Yes |
| College | Sam Houston State Univ. Huntsville, TX | Business/Accounting | Yes BBA |
| Post College | | | |

Do you have any Legal, Para-Legal, or Medical Training? Yes [✓ No]
If yes, describe

| | | | |
|---|---|---|---|
| Civil Suits | Have you sued or been sued? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | [✓ Yes] No<br>Yes No | Case Type Multiple charges<br>Settled before verdict |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |
| Criminal Actions | Have you been charged criminally, other than a traffic ticket? | Yes [✓ No] | Case Type |
| | Have you made a criminal complaint? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | [✓ Yes] No<br>[✓ Yes] No | Case Type Robbery<br>Guilty |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |

| | |
|---|---|
| List the magazines & newspapers you read | Houston Chronicle, Wall Street Journal, Texas Lawyer<br>Houston Business Journal |
| List the civic clubs, societies, unions, and political groups you and your spouse have joined. | None |
| Do you have a physical, or other inability that would keep you from serving as a juror? If yes, please describe | I broke my back in March 05. I could serve but I cannot sit over a few hours without a break. |

Juror Number 010

# INSTRUCTIONS TO JURORS

The attached questionnaire must be answered by you. The answers will assist the judge and lawyers in selecting a jury. Answer all the questions to the best of your ability. There are no right or wrong answers. To answer correctly you must answer honestly.

We need your help so that we can select a fair and impartial jury in this case. Only the judge and lawyers will know your name. Do not assume anything from these questions. The fact they are being asked does not necessarily have anything to do with the evidence that you will hear.

The judge and lawyers know that every person has beliefs and prejudices concerning many things. You should answer with your true feelings, whatever they may be. Do not assume that any of your answers will qualify you or disqualify you from serving on this jury.

Please fully answer each question to the best of your ability. Write or print clearly. You must not ask anyone for help. Do the best you can.

If you cannot answer a question because you do not understand it, write "Do Not Understand" in the margin next to the question. If you cannot answer because you do not know, write "Do Not Know" in the margin next to the question. If you want to explain your answer do so briefly in the margin next to the question. If for any reason you do not want to answer any of the questions asked, please write the word "PRIVATE" next to the question and we will take this matter up with you privately.

We are all certain that you understand the importance of juries to our American system of justice. We are confident that you will not try to avoid your duty as a citizen to serve if it is at all possible to do so. Without your help our courts cannot operate properly under the Constitution.

An Explanation Sheet is provided for you at the end of the questionnaire to answer questions more fully. Rather than leaving out information, please turn to the end and put your answers on the explanation sheet provided.

Because your answers are part of the jury selection process and become part of the records of this court, your answers must be truthful and under penalty of perjury.

# JUROR QUESTIONNAIRE

**Juror #:** 010

1. **Full Name:** Douglas Guy Baggett **Gender:** ☒ Male ☐ Female **Age:** 55
2. **What is your race?** Caucasian
3. **City of Residence:** Houston **Years There:** 37 **Birth Place:** Pasadena, TX
4. **What is your zip code?** 77096
5. **Who is your employer and what is your job (If unemployed/retired, what and where was your last job)?** Shell Oil Co. I am the Administrator or Administrative Manager for Shell Oil Legal Department, U.S.
6. **For how many years have/did you worked there?** 6
7. **Describe your job duties or responsibilities:** Manage administration for Le[illegible] Corporate department.
8. **What jobs have you held in the past?** Corporate accountant, Controller, Law Firm Administrator
9. **Have you ever been laid off from a job?** ☐ YES ☒ NO
   **If YES, how long ago?**
10. **Have you or your immediate family ever been affected by any type of layoff or downsizing?** ☐ YES ☒ NO
    **If YES, please explain:**
11. **Have you ever been responsible for hiring, firing, or supervising employees?** ☒ YES ☐ NO
12. **How far did you go in school [If college or post-college, name the school(s) and any degrees received]?** BBA - Sam Houston State University
13. **Current marital status:** Married **If married, for how long?** 33 **How many times?** 1
14. **Spouse's Name:** Janice Ann Baggett **Spouse's Birth Place:** Pasadena, TX
15. **Who is your spouse/partner's employer and what is this person's job (If unemployed/retired, what and where was this person's last job)?** Currently housewife, last job was temp. executive secretary for Hale-Mills, Inc.

Juror Number 010

16. What jobs has this person held in the past? Secretarial for Exxon, City of Pasadena

17. Please list the sex, age, and occupation for each of your children and step-children:
Gregory Douglas Buggett, Male, 19, college student

18. List all governments and government agencies (do not include law enforcement or military) that you and your relatives have worked for and tell us who held this job, what governmental unit, and the type of work: One cousin is Justice of the Peace in Liveoak County, TX

19. Have you, any family members, or friends ever been employed by or applied for a job with any law enforcement agency? ☒ YES ☐ NO

If YES:

a) Were you, your family member, or friend hired? Yes

b) What job did you, your family member, or friend apply for and/or have? One brother in law was policeman, one uncle and one cousin were sheriffs.

c) When did you, your family member, or friend apply for and/or have this job?
Don't know

d) Do you, your family member, or friend still hold this job today? ☐ YES ☒ NO

If NO, when and how did that employment end? Policeman died of heart attack. Sheriff's retired.

20. Have you or has anyone close to you ever had a negative experience dealing with law enforcement officers at the local or federal level (such as the police, FBI, INS, IRS, etc)? ☐ YES ☒ NO

If YES, please describe:

If YES, what is your opinion toward that agency now?

21. Have you or has anyone close to you ever had a negative experience dealing with the United States government or any governmental agency? ☐ YES ☒ NO

If YES, please describe:

If YES, what is your opinion toward that institution or agency now?

22. Have you or any family members ever owned your (their) own business? ☒ YES ☐ NO

**If YES, please tell us what type of business and is the business still open?**
Broter in law owns shopping center development company. It is still open.

23. **Have you ever worked for a large corporation?** ☒ **YES** ☐ **NO**

**If YES:**

**a) What corporation(s) did you work for and when?** Shell Oil Co., Jan 2000 to current.

**b) Are (were) you satisfied with your work at the corporation?** ☒ **YES** ☐ **NO**

**c) Have you ever had a bad experience with a large corporation?** ☐ **YES** ☒ **NO**

**If YES, please explain.**

24. **What are your opinions about the compensation that executives of large corporations receive?**
It in some cases is excessive.

25. **Have you had any education, training or experience in: accounting, bookkeeping, business, business management, finance, corporate finance, investment banking, law (criminal and/or civil), ethics, law enforcement, marketing, or stock trading?** ☒ **YES** ☐ **NO**

**If YES, please describe your education training or experience:** I have a BBA in accounting, was on trustee boards for Pension Plan and 401-k plan at a large law firm, have been corporate controller, worked for/with lawyers for past 23 years.

26. **Do you know anyone who works for the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office?** ☒ **YES** ☐ **NO**

**If YES, whom do you know and what is the nature of your relationship with that person?**
knew Texas Attorney General at law firm: Greg Abbott, still hear from him through mutual acquaintances.

27. **Have you ever had any dealings with any person in the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office?** ☐ **YES** ☒ **NO**

**If YES, describe the nature of those dealings and when they occurred.**

28. **Do you know (on a personal, professional, or casual basis) any attorneys or judges?** ☒ **YES** ☐ **NO**

**If YES:**

a) Please identify whom you know and what his or her job is. See explanation sheet

b) How do you know this person (these people)?

c) What is the nature of your relationship with this person (these people)?

29. Have you ever sued or been sued? ☐ YES ☒ NO

If YES, please tell us if you were the plaintiff (the party suing) or the defendant (the party being sued), the type of case, and the outcome:

30. Have you served as a juror for a:

a) ☑ Criminal case 1 times ☑ Civil case 1 times ☐ Grand Jury ___ times ☐ Never served

b) What type(s) of criminal case(s)? Aggravated robery, resisting arrest

c) What was the verdict(s)? Guilty

d) Were you ever the foreperson? ☐ YES ☒ NO

e) What did you like or dislike about serving on a jury? Lawyers wasting time asking the same question over & over. Defendant had a terrible lawyer.

31. Have you ever filed a criminal complaint or appeared as a witness in any criminal case? ☐ YES ☒ NO

If YES, please explain (including the nature of the case, and whether you appeared as a witness for the prosecution or for the defense).

32. Have you, any family members, or friends ever worked for the Arthur Andersen accounting firm?

☐ YES ☒ NO

If YES:

a) Who worked for Arthur Anderson?

b) When and where did they work for Arthur Andersen?

c) Describe the nature of their work for Arthur Andersen.

33. Have you, any family members, or friends ever worked for or applied for work with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES:

a) Who worked for or applied for work with Enron or its subsidiaries? ______

b) Were you or any family members or friends hired by Enron or its subsidiaries? ______

c) When did you or any family members or friends hold/apply for this job? ______

d) When and how did this employment terminate? ______

34. Have you, any family members, or friends ever done business with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES, please describe the nature of that business, when it occurred, and who was involved. ______

35. Have you, any family members, or friends ever owned stock in Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☐ NO See explanation sheet.

If YES:

a) Approximately how many shares did you, your family member, or friend own? ______

b) When did you, your family member, or friend purchase the shares? ______

c) Did you, your family member, or friend ever sell the shares? If so, please identify when you sold, for what reason, and whether you made or lost money on the sale. ______

36. Do you know anyone who lost their job or lost money in an investment, an IRA, 401K, or other retirement plan as a result of the bankruptcy of Enron? ☒ YES ☐ NO

If YES, please explain. Knew some casual co-workers that owned Enron stock. I know two former Enron employees that worked for Shell (my current employer).

37. Have you, any family members, or friends ever been employed by a company that has been affected by the Enron bankruptcy or the layoffs of Enron employees? ☐ YES ☒ NO

If YES, please explain.

**38.** Do you know anyone, whom you have not mentioned above, who has been negatively affected or hurt in any way by what happened at Enron? ☐ YES ☒ NO

If YES, please tell us the name of the person and how they were affected.

**39.** Do you have an opinion about the cause of the collapse of Enron? ☒ YES ☐ NO

a) If YES, what is your opinion? Collapse was due to greed and mismanagement.

b) On what do you base your opinion? Watching, listening to and reading the news.

**40.** What do you think about the U.S. Government's investigation into the collapse of Enron?

No opinion. I did not follow it.

**41.** Have you heard or read about any of the Enron cases? ☒ YES ☐ NO

If YES, please tell us the name of all sources from which you have heard or read about the Enron cases (such as the Houston Chronicle, Time Magazine, Channel 13 news, O'Reilly Factor, Rush Limbaugh radio show, talking with friends, family or co-workers, internet news sources, blogs, etc.)?

Houston Chronicle, all three Houston news channels, Fox news, talking with friends & co-workers, Texas lawyer magazine.

42. **Have you read any books or seen any movies about Enron?** ☐ YES ☒ NO

**If YES, please describe the book(s) or movie(s) and tell us what you thought of that book or movie:** __

43. **Have you, your business, any family member, or your employer ever filed for bankruptcy?**

☐ YES ☒ NO **If YES, please tell us who filed and what happened.**

44. **Who makes the financial decisions in your household?** My wife and I.

45. **Do you currently, or have you ever, owned stocks (including mutual funds)?** ☒ YES ☐ NO

46. **Have you or your spouse lost a significant amount of money in the stock market in the past ten (10) years?** ☐ YES ☒ NO **If YES, please explain what happened.**

47. **Which of the following words would describe you? Please check (✓) all that apply:**

☐ Assertive ☒ Analytical ☒ Business-minded ☒ Cautious ☒ Compulsive
☒ Creative ☒ Decisive ☒ Detailed ☒ Dedicated ☐ Entrepreneur
☐ Impulsive ☒ Innovative ☐ Judgmental ☐ Law & Order ☐ Leader
☒ Logical ☒ Loyal ☐ Opinionated ☐ Outspoken ☒ Practical
☒ Private ☒ Problem solver ☐ Pro-business ☐ Pro-worker ☐ Pro-Government
☐ Religious ☐ Skeptical ☐ Snap-decisions ☐ Strict ☐ Technical
☒ Thoughtful ☐ Trusting ☐ Visual ☐ Other: ______

48. **Please list (3) people that you admire the *most*:**

(1) My Mother
(2) My dad
(3) My wife

49. **Please list (3) people that you admire the *least*:**

(1) Don't know, possibly all terrorists.
(2)
(3)

50. **What do you enjoy doing in your spare time?** Fishing, work around house and yard, working on cars, motors

51. **Please list your (3) favorite television shows:**
(1) Two and a half men
(2) Lost
(3) Antique Road Show on PBS

52. **What courtroom or law-related television shows do you watch?** None

53. **What sites on the Internet do you regularly visit?** weather, news, son's college website.

54. **What newspapers, magazines, or trade publications do you read?** Houston Chronicle, Wall Street Journal, Texas Lawyer, Houston Business Journal

55. **Which financial newspapers or magazines (such as the *Wall Street Journal*, *Business Week*, *Barrons*, *Economist*, *Forbes*, *Fortune*, *Money Magazine*, etc.), if any, do you read, and what financial programs, if any, do you watch on television?** Wall Street Journal, no television shows

56. **Which *one* source do you get *most* of your news from?** Channel 13 news in Houston

57. **Please list all unions or civic, social, political, professional, and religious groups or organizations to which you or your spouse/partner belong:** None

58. **Have you held leadership roles in any of these organizations?** ☐ YES ☒ NO
**If YES, what was the role?**

59. **Please tell us about any volunteer work you do (now or past):** I usually do at least one day/year with my company.

60. **On social issues, are you:** ☐ Very conservative ☒ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

61. **On economic issues are you:** ☐ Very conservative ☒ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

62. **Political party preference:** ☐ Democrat ☐ Independent ☒ Republican ☐ Other:

63. **Other than a traffic ticket, have you ever been arrested for, charged with, or convicted of a crime?**
☐ YES ☒ NO
**If YES:**
a) Describe the nature of the charge.
b) Did this charge result in a conviction?
c) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?

d) Do you feel you were treated fairly? __________

64. Other than a traffic ticket, have any of your family members ever been arrested for, charged with, or convicted of a crime? ☐ YES ☒ NO

If YES:

a) What family member? __________

b) Describe the nature of the charge. __________

c) Did this charge result in a conviction? __________

d) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea? __________

e) Do you feel your family member was treated fairly? __________

65. Which best describes your total yearly household income?

☐ Under $25,000 ☐ $25 - $50,000 ☐ $50 - $100,000 ☒ $100 - $250,000 ☐ More than $250,000

66. Religious Preference: Methodist / Catholic

67. Are you angry about what happened with Enron? ☐ YES ☒ NO

If YES, please explain. __________

68. Of all the things you have seen, heard, or read about Enron, what stands out in your mind? __________

What a shame

69. Do you, any family member, or friend know or have any connection with any of the defendants or their families in this case?

a) Kenneth Lay ☐ YES ☒ NO

b) Jeffrey Skilling ☐ YES ☒ NO

c) Richard Causey ☐ YES ☒ NO

If you have answered YES as to any of the defendants, please explain. __________

70. Do you have an opinion about any of the following people?

a) Kenneth Lay (former Chairman and Chief Executive Officer of Enron) ☒ YES ☐ NO

**If YES, what is your opinion?** If he did not know what was going on in his company, he was really a poor manager/leader.

**On what do you base your opinion?** Experience in business.

b) **Jeffrey Skilling (former Chief Operating Officer, President, Chief Executive Officer of Enron)**

☐ YES ☒ NO

**If YES, what is your opinion?**

**On what do you base your opinion?**

c) **Richard Causey (former Chief Accounting Officer of Enron)** ☐ YES ☒ NO

**If YES, what is your opinion?**

**On what do you base your opinion?**

d) **Sherron Watkins (former employee of Enron)** ☐ YES ☒ NO

**If YES, what is your opinion?**

**On what do you base your opinion?**

71. **Based on anything you have heard, read, or been told do you have any opinion about the guilt or innocence of any of the following people:**

a) **Richard Causey** ☒ YES ☐ NO
b) **Jeffrey Skilling** ☒ YES ☐ NO
c) **Kenneth Lay** ☒ YES ☐ NO

**If you have answered YES as to any of these people, please explain.** I cannot say if they are guilty or ~~innocent~~ innocent, I would say they are suspect.

72. The Judge in this case will instruct you that the indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

73. Notwithstanding the instructions that the judge will give you at the trial, would any opinion you may have formed regarding Enron or any of the defendants prevent you from impartially considering the evidence presented during the trial of these three defendants?

| | |
|---|---|
| a) Kenneth Lay | ☐ YES ☒ NO ☐ UNSURE |
| b) Jeffrey Skilling | ☐ YES ☒ NO ☐ UNSURE |
| c) Richard Causey | ☐ YES ☒ NO ☐ UNSURE |

If YES or UNSURE as to any of these people, please explain.

74. Is there anything else you feel is important for the court to know about you? In March, 2005 I fell from a ladder, fracturing two lower vertebrae and flattening one disk in my spinal column. I still have pain every day and cannot sit more than a couple of hours at a time. If I then can get up and walk some, I am Ok.

75. Would you like to serve on this jury? ☐ YES ☒ NO ☐ DON'T KNOW

Please explain your answer. Due to my injury discussed above in #74, I missed three full months work. In addition to the 3 months, I have only worked part time for another three months and returned to full days Sept. 15, 2005. This has cost me over $15,000 in lost pay. I cannot afford to miss any more work time.

**76. Do you have a physical or other disability that would keep you from serving as a juror?**

☒ **YES** ☐ **NO** **If YES, please explain.** Please see #74 & #75

**77. This trial will begin on January 17, 2006, and may last as long as 6 months. You may rely upon the jury being in session Monday through Thursday from 8:30 am until 5:00 pm. The court will not be in session during federal holidays. A trial of this length is a hardship on virtually every juror. Would serving as a juror in this case cause such a severe hardship that it would affect your ability to be a fair and impartial juror?** ☒ **YES** ☐ **NO**

**If YES, please explain.** As I explained in #74 and #75 above, if I have to sit for any extended period, I am still in a lot of pain. Having been through wearing a full brace for 9 weeks, physical therapy and a lot of pain, I know that pain or the avoidance of it can be an extreme factor. If I were picked and could not alleviate the pain, I do not believe I could focus on doing my job as a juror.

## *OATH*

**I hereby swear or affirm that all of my answers in this questionnaire are true and correct to the best of my ability.**

11/07/05

**Juror's Signature** **Date**

Juror Number 010

# EXPLANATION SHEET

28a. I have been in the legal business for the past 23 years. I currently work with over 125 attorneys at Shell, and previously over 1000 attorneys at Butler & Binion. My neighbor is a judge with the family law center here in Houston. His name is David Farr.

35. I may have had Enron stock in a mutual fund but never owned and directly.

JUROR QUESTIONNAIRE

11
(For Official Use Only)

This form helps the court select a jury. Please answer all blanks *in print and in black ink.* If the question does not apply to you, please write "NA" in it. The lawyers are entitled to information about potential jurors, but if you choose not to answer a question for private reasons, please draw a single line through it.

| | | | |
|---|---|---|---|
| Name<br>DONALD E. MARTIN | Age<br>66 | Birth Place<br>TEXAS | Religious Preference |

| | | | | |
|---|---|---|---|---|
| City of Residence<br>HOUSTON | Years There<br>43 | Employer (ex if retired)<br>JACOBS | Type of Work<br>ENGINEERING | Years<br>45 |

| | | | | | |
|---|---|---|---|---|---|
| Children's Ages & Sex | 43 M | 40 M | | | Grown Children's Type of Work<br>I.T. & ENGINEERING |
| | | | | | |

| | | |
|---|---|---|
| Marital Status<br>MARRIED | Spouse's Name<br>JANICE | Spouse's Birth Place<br>TEXAS |

| | | |
|---|---|---|
| Spouse's Employer<br>N/A | Type of Work | Years |

| | | | |
|---|---|---|---|
| List governments that you & relatives have worked for. List law enforcement but not the military. | Who?<br>N/A | Governmental Unit | Type of Work |

| | | | |
|---|---|---|---|
| Have you served in the military? | [✓ Yes] No | Branch & Highest Rank | Years |

| | | | |
|---|---|---|---|
| School Level | School and City | Subject Studied | Degree |
| High School | MC CALLUM – AUSTIN, TX | | |
| College | | | |
| Post College | | | |

Do you have any Legal, Para-Legal, or Medical Training? Yes No
If yes, describe

| | | | |
|---|---|---|---|
| Civil Suits | Have you sued or been sued? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | [✓ Yes] No<br>[✓ Yes] No | Case Type WORKMANS COMP |
| | Have you been a witness in court? | [✓ Yes] No | Case Type |
| Criminal Actions | Have you been charged criminally, other than a traffic ticket? | Yes [✓ No] | Case Type |
| | Have you made a criminal complaint? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | [✓ Yes] No<br>[✓ Yes] No | Case Type HARASSMENT BY PHONE |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |

| | |
|---|---|
| List the magazines & newspapers you read. | HOUSTON CHRONICLE, HOTROD. GUN & AMMO, POPULAR SCIENCE |
| List the civic clubs, societies, unions, and political groups you and your spouse have joined | HOLLY TERRACE CIVIC CLUB |
| Do you have a physical, or other inability that would keep you from serving as a juror? If yes, please describe | NO |

Juror Number 011

# INSTRUCTIONS TO JURORS

The attached questionnaire must be answered by you. The answers will assist the judge and lawyers in selecting a jury. Answer all the questions to the best of your ability. There are no right or wrong answers. To answer correctly you must answer honestly.

We need your help so that we can select a fair and impartial jury in this case. Only the judge and lawyers will know your name. Do not assume anything from these questions. The fact they are being asked does not necessarily have anything to do with the evidence that you will hear.

The judge and lawyers know that every person has beliefs and prejudices concerning many things. You should answer with your true feelings, whatever they may be. Do not assume that any of your answers will qualify you or disqualify you from serving on this jury.

Please fully answer each question to the best of your ability. Write or print clearly. You must not ask anyone for help. Do the best you can.

If you cannot answer a question because you do not understand it, write "Do Not Understand" in the margin next to the question. If you cannot answer because you do not know, write "Do Not Know" in the margin next to the question. If you want to explain your answer do so briefly in the margin next to the question. If for any reason you do not want to answer any of the questions asked, please write the word "PRIVATE" next to the question and we will take this matter up with you privately.

We are all certain that you understand the importance of juries to our American system of justice. We are confident that you will not try to avoid your duty as a citizen to serve if it is at all possible to do so. Without your help our courts cannot operate properly under the Constitution.

An Explanation Sheet is provided for you at the end of the questionnaire to answer questions more fully. Rather than leaving out information, please turn to the end and put your answers on the explanation sheet provided.

Because your answers are part of the jury selection process and become part of the records of this court, your answers must be truthful and under penalty of perjury.

# JUROR QUESTIONNAIRE

**Juror #:** 011

1. **Full Name:** DONALD EDWARD MARTIN **Gender:** ☑ Male ☐ Female **Age:** ______
2. **What is your race?** WHITE
3. **City of Residence:** HOUSTON **Years There:** 43 **Birth Place:** TEXAS
4. **What is your zip code?** 77080
5. **Who is your employer and what is your job (if unemployed/retired, what and where was your last job)?** JACOBS
6. **For how many years have/did you worked there?** 1
7. **Describe your job duties or responsibilities:** ELECTRICAL DESIGN
8. **What jobs have you held in the past?** ELECTRICAL DESIGN FOR NUMEROUS FIRMS.
9. **Have you ever been laid off from a job?** ☑ YES ☐ NO
   **If YES, how long ago?** 3 YRS
10. **Have you or your immediate family ever been affected by any type of layoff or downsizing?** ☑ YES ☐ NO
    **If YES, please explain:** OUT OF WORK FOR TWO YEARS
11. **Have you ever been responsible for hiring, firing, or supervising employees?** ☑ YES ☐ NO
12. **How far did you go in school (If college or post-college, name the school(s) and any degrees received)?** SOME College – NO DEGREE
13. **Current marital status:** MARRIED **If married, for how long?** 24 **How many times?** 2
14. **Spouse's Name:** JANICE **Spouse's Birth Place:** TEXAS
15. **Who is your spouse/partner's employer and what is this person's job (if unemployed/retired, what and where was this person's last job)?** DRAFTSMAN – LITWIN

16. What jobs has this person held in the past? PROJECT SECRETARY, DRAFTSMAN

17. Please list the sex, age, and occupation for each of your children and step-children:
43 MALE - I.T. INFORMATION TECHNOLOGY
40 MALE - LAND DRAFTING & LEGAL DESCRIPTION

18. List all governments and government agencies (do not include law enforcement or military) that you and your relatives have worked for and tell us who held this job, what governmental unit, and the type of work: N.A.

19. Have you, any family members, or friends ever been employed by or applied for a job with any law enforcement agency? ☑ YES ☐ NO

If YES:

a) Were you, your family member, or friend hired? YES

b) What job did you, your family member, or friend apply for and/or have?
POLICEMAN - CITY OF AUSTIN, TEXAS

c) When did you, your family member, or friend apply for and/or have this job? 1956

d) Do you, your family member, or friend still hold this job today? ☐ YES ☑ NO LICENSE ~~LICENSE~~
If NO, when and how did that employment end? TRANSFERRED TO ~~LISCENSE~~
& WEIGHT

20. Have you or has anyone close to you ever had a negative experience dealing with law enforcement officers at the local or federal level (such as the police, FBI, INS, IRS, etc)? ☐ YES ☑ NO

If YES, please describe:

If YES, what is your opinion toward that agency now?

21. Have you or has anyone close to you ever had a negative experience dealing with the United States government or any governmental agency? ☐ YES ☑ NO

If YES, please describe:

If YES, what is your opinion toward that institution or agency now?

22. Have you or any family members ever owned your (their) own business? ☑ YES ☐ NO

**If YES, please tell us what type of business and is the business still open?**

LANDSCAPING - BUSINESS CLOSED

**23. Have you ever worked for a large corporation? ☑ YES ☐ NO**

**If YES:**

**a) What corporation(s) did you work for and when?** LUMMUS, BECHTEL, LITWIN 1970-1979, KBR 1981-2002, JACOBS (2004-2005)

**b) Are (were) you satisfied with your work at the corporation? ☑ YES ☐ NO**

**c) Have you ever had a bad experience with a large corporation? ☐ YES ☑ NO**

**If YES, please explain.**

**24. What are your opinions about the compensation that executives of large corporations receive?**

TOO HIGH

**25. Have you had any education, training or experience in: accounting, bookkeeping, business, business management, finance, corporate finance, investment banking, law (criminal and/or civil), ethics, law enforcement, marketing, or stock trading? ☐ YES ☑ NO**

**If YES, please describe your education training or experience:**

**26. Do you know anyone who works for the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☑ NO** ? Jill

**If YES, whom do you know and what is the nature of your relationship with that person?**

**27. Have you ever had any dealings with any person in the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☑ NO**

**If YES, describe the nature of those dealings and when they occurred.**

**28. Do you know (on a personal, professional, or casual basis) any attorneys or judges? ☐ YES ☑ NO**

**If YES:**

a) Please identify whom you know and what his or her job is. ______

b) How do you know this person (these people)? ______

c) What is the nature of your relationship with this person (these people)? ______

29. Have you ever sued or been sued? ☑ YES ☑ NO

If YES, please tell us if you were the plaintiff (the party suing) or the defendant (the party being sued), the type of case, and the outcome: ______

30. Have you served as a juror for a:

a) ☑ Criminal case 2 times ☑ Civil case 3 times ☐ Grand Jury ___ times ☐ Never served

b) What type(s) of criminal case(s)? HARASSMENT , PEEPING TOM

c) What was the verdict(s)? ______

d) Were you ever the foreperson? ☐ YES ☑ NO

e) What did you like or dislike about serving on a jury? ______

31. Have you ever filed a criminal complaint or appeared as a witness in any criminal case? ☐ YES ☑ NO

If YES, please explain (including the nature of the case, and whether you appeared as a witness for the prosecution or for the defense). ______

32. Have you, any family members, or friends ever worked for the Arthur Andersen accounting firm?

☐ YES ☑ NO

If YES:

a) Who worked for Arthur Andersen? ______

b) When and where did they work for Arthur Andersen? ______

c) Describe the nature of their work for Arthur Andersen. ______

33. Have you, any family members, or friends ever worked for or applied for work with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES:

a) Who worked for or applied for work with Enron or its subsidiaries?

b) Were you or any family members or friends hired by Enron or its subsidiaries?

c) When did you or any family members or friends hold/apply for this job?

d) When and how did this employment terminate?

34. Have you, any family members, or friends ever done business with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES, please describe the nature of that business, when it occurred, and who was involved.

35. Have you, any family members, or friends ever owned stock in Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES:

a) Approximately how many shares did you, your family member, or friend own?

b) When did you, your family member, or friend purchase the shares?

c) Did you, your family member, or friend ever sell the shares? If so, please identify when you sold, for what reason, and whether you made or lost money on the sale.

36. Do you know anyone who lost their job or lost money in an investment, an IRA, 401K, or other retirement plan as a result of the bankruptcy of Enron? ☑ YES ☐ NO

If YES, please explain. WORK WITH SOME ONE WHO WORKED AT ENRON

37. Have you, any family members, or friends ever been employed by a company that has been affected by the Enron bankruptcy or the layoffs of Enron employees? ☐ YES ☑ NO

If YES, please explain. ______

38. Do you know anyone, whom you have not mentioned above, who has been negatively affected or hurt in any way by what happened at Enron? ☐ YES ☑ NO

If YES, please tell us the name of the person and how they were affected. ______

39. Do you have an opinion about the cause of the collapse of Enron? ☑ YES ☐ NO

a) If YES, what is your opinion?

GREED ON ENRON'S PART
RETALIATION ON CALIFORNIA'S PART

b) On what do you base your opinion? ARTICLES I'VE READ

40. What do you think about the U.S. Government's Investigation into the collapse of Enron?

NEEDED TO BE DONE

41. Have you heard or read about any of the Enron cases? ☑ YES ☐ NO

If YES, please tell us the name of all sources from which you have heard or read about the Enron cases (such as the Houston Chronicle, Time Magazine, Channel 13 news, O'Reilly Factor, Rush Limbaugh radio show, talking with friends, family or co-workers, internet news sources, blogs, etc.)?

HOUSTON CHRONICLE, CHANNEL 2 NEWS, CHANNEL 13 NEWS, O'REILLY FACTOR, TALKING WITH FRIENDS AND CO-WORKERS

42. Have you read any books or seen any movies about Enron? ☐ YES ☑ NO

If YES, please describe the book(s) or movie(s) and tell us what you thought of that book or movie:

43. Have you, your business, any family member, or your employer ever filed for bankruptcy?

☐ YES ☑ NO If YES, please tell us who filed and what happened.

44. Who makes the financial decisions in your household? COMBINATION

45. Do you currently, or have you ever, owned stocks (including mutual funds)? ☑ YES ☐ NO

46. Have you or your spouse lost a significant amount of money in the stock market in the past ten (10) years? ☐ YES ☑ NO If YES, please explain what happened.

47. Which of the following words would describe you? Please check (✓) all that apply:

☐ Assertive
☐ Creative
☑ Impulsive
☑ Logical
☑ Private
☐ Religious
☐ Thoughtful
☑ Analytical
☐ Decisive
☐ Innovative
☐ Loyal
☐ Problem solver
☐ Skeptical
☐ Trusting
☐ Business-minded
☐ Detailed
☐ Judgmental
☐ Opinionated
☐ Pro-business
☐ Snap-decisions
☐ Visual
☐ Cautious
☐ Dedicated
☐ Law & Order
☐ Outspoken
☐ Pro-worker
☐ Strict
☐ Other:
☐ Compulsive
☐ Entrepreneur
☐ Leader
☐ Practical
☐ Pro-Government
☐ Technical

48. Please list (3) people that you admire the *most*:

(1) GEORGE W. BUSH
(2) BILL GATES
(3)

49. Please list (3) people that you admire the *least*:

(1) BILL CLINTON
(2) JOHN KERRY
(3) HILLIARY CLINTON

50. What do you enjoy doing in your spare time? HUNTING, FISHING, COMPUTERS

51. Please list your (3) favorite television shows:
(1) MONDAY NIGHT FOOTBALL
(2) ALL SPORTS
(3) RIDES

52. What courtroom or law-related television shows do you watch? NONE

53. What sites on the Internet do you regularly visit? INTELLICAST WEATHER, HOUSTON CHRONICLE

54. What newspapers, magazines, or trade publications do you read? HOUSTON CHRONICLE, GUNS AND AMMO, HOT ROD, POPULAR SCIENCE

55. Which financial newspapers or magazines (such as the *Wall Street Journal, Business Week, Barrons, Economist, Forbes, Fortune, Money Magazine*, etc.), if any, do you read, and what financial programs, if any, do you watch on television? NONE

56. Which *one* source do you get *most* of your news from? HOUSTON CHRONICLE

57. Please list all unions or civic, social, political, professional, and religious groups or organizations to which you or your spouse/partner belong: HOLLY TERRACE CIVIC CLUB, SPRING BRANCH COMMUNITY CHURCH

58. Have you held leadership roles in any of these organizations? ☐ YES ☑ NO
If YES, what was the role?

59. Please tell us about any volunteer work you do (now or past): NONE

60. On social issues, are you: ☐ Very conservative ☑ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

61. On economic issues are you: ☐ Very conservative ☑ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

62. Political party preference: ☐ Democrat ☐ Independent ☑ Republican ☐ Other:

63. Other than a traffic ticket, have you ever been arrested for, charged with, or convicted of a crime?
☐ YES ☑ NO
If YES:
a) Describe the nature of the charge.
b) Did this charge result in a conviction?
c) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?

d) Do you feel you were treated fairly?

64. Other than a traffic ticket, have any of your family members ever been arrested for, charged with, or convicted of a crime? ☑ YES ☐ NO

If YES:

a) What family member? SON

b) Describe the nature of the charge. POSSESSION OF A CONTROLLED SUBSTANCE

c) Did this charge result in a conviction? DEFERRED

d) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?

e) Do you feel your family member was treated fairly? YES

65. Which best describes your total yearly household income? PRIVATE

☐ Under $25,000 ☐ $25 - $50,000 ☐ $50 - $100,000 ☐ $100 - $250,000 ☐ More than $250,000

66. Religious Preference: BAPTIST

67. Are you angry about what happened with Enron? ☐ YES ☑ NO

If YES, please explain.

68. Of all the things you have seen, heard, or read about Enron, what stands out in your mind?

A LOT OF PEOPLE WERE HURT FINANCIALLY

69. Do you, any family member, or friend know or have any connection with any of the defendants or their families in this case?

a) Kenneth Lay ☐ YES ☑ NO

b) Jeffrey Skilling ☐ YES ☑ NO

c) Richard Causey ☐ YES ☑ NO

If you have answered YES as to any of the defendants, please explain.

70. Do you have an opinion about any of the following people?

a) Kenneth Lay (former Chairman and Chief Executive Officer of Enron) ☐ YES ☑ NO

If YES, what is your opinion? ______________________________

______________________________

______________________________

______________________________

On what do you base your opinion? ______________________________

______________________________

b) Jeffrey Skilling (former Chief Operating Officer, President, Chief Executive Officer of Enron)

☐ YES ☑ NO

If YES, what is your opinion? ______________________________

______________________________

______________________________

______________________________

On what do you base your opinion? ______________________________

______________________________

c) Richard Causey (former Chief Accounting Officer of Enron) ☐ YES ☑ NO

If YES, what is your opinion? ______________________________

______________________________

______________________________

______________________________

On what do you base your opinion? ______________________________

______________________________

d) Sherron Watkins (former employee of Enron) ☐ YES ☑ NO

If YES, what is your opinion? ______________________________

______________________________

______________________________

______________________________

On what do you base your opinion? ______________________________

______________________________

71. Based on anything you have heard, read, or been told do you have any opinion about the guilt or innocence of any of the following people:

a) Richard Causey ☐ YES ☑ NO

b) Jeffrey Skilling ☐ YES ☑ NO

c) Kenneth Lay ☐ YES ☑ NO

If you have answered YES as to any of these people, please explain. ______________________________

______________________________

______________________________

72. The Judge in this case will instruct you that the indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

73. Notwithstanding the instructions that the judge will give you at the trial, would any opinion you may have formed regarding Enron or any of the defendants prevent you from impartially considering the evidence presented during the trial of these three defendants?

| | |
|---|---|
| a) Kenneth Lay | ☐ YES ☑ NO ☐ UNSURE |
| b) Jeffrey Skilling | ☐ YES ☑ NO ☐ UNSURE |
| c) Richard Causey | ☐ YES ☑ NO ☐ UNSURE |

If YES or UNSURE as to any of these people, please explain.

74. Is there anything else you feel is important for the court to know about you? NO

75. Would you like to serve on this jury? ☐ YES ☑ NO ☐ DON'T KNOW

Please explain your answer. I THINK THE TRIAL WILL BE LONG & CAUSE A FINANCIAL BURDEN

76. Do you have a physical or other disability that would keep you from serving as a juror?

☐ YES ☑ NO If YES, please explain. ____________________

77. This trial will begin on January 17, 2006, and may last as long as 6 months. You may rely upon the jury being in session Monday through Thursday from 8:30 am until 5:00 pm. The court will not be in session during federal holidays. A trial of this length is a hardship on virtually every juror. Would serving as a juror in this case cause such a severe hardship that it would affect your ability to be a fair and impartial juror? ☑ YES ☐ NO

✓ If YES, please explain. A SEVERE ~~AND~~ FINANCIAL BURDEN AFTER TWO YEARS WITHOUT WORK AND NEW TO A COMPANY.

## OATH

I hereby swear or affirm that all of my answers in this questionnaire are true and correct to the best of my ability.

Juror's Signature Date

# EXPLANATION SHEET

JUROR QUESTIONNAIRE

13
(For Official Use Only)

This form helps the court select a jury. Please answer all blanks *in print and in black ink.* If the question does not apply to you, please write "NA" in it. The lawyers are entitled to information about potential jurors, but if you choose not to answer a question for private reasons, please draw a single line through it.

| | | | |
|---|---|---|---|
| Name<br>Freddy R. Delgado | Age<br>41 | Birth Place<br>New Jersey | Religious Preference<br>Christian |

| | | | | |
|---|---|---|---|---|
| City of Residence<br>Sugar Land | Years There<br>13 | Employer (ex if retired)<br>Houston ISD | Type of Work<br>Principal | Years<br>5 |

| | | | | | |
|---|---|---|---|---|---|
| Children's Ages & Sex | 14 | | | | Grown Children's Type of Work |
| | M | | | | N/A |

| | | |
|---|---|---|
| Marital Status<br>Divorced | Spouse's Name<br>N/A | Spouse's Birth Place<br>N/A |

| | | |
|---|---|---|
| Spouse's Employer<br>N/A | Type of Work<br>N/A | Years<br>N/A |

| | | | |
|---|---|---|---|
| List governments that you & relatives have worked for. List law enforcement but not the military. | Who? | Governmental Unit | Type of Work |

| | | | |
|---|---|---|---|
| Have you served in the military? | Yes No | Branch & Highest Rank | Years |

| School Level | School and City | Subject Studied | Degree |
|---|---|---|---|
| High School | | | |
| College | | | |
| Post College | | | |

Do you have any Legal, Para-Legal, or Medical Training? Yes [✓ No]
If yes, describe

| | | | |
|---|---|---|---|
| Civil Suits | Have you sued or been sued? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes No | Case Type |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |
| Criminal Actions | Have you been charged criminally, other than a traffic ticket? | Yes [✓ No] | Case Type |
| | Have you made a criminal complaint? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes [✓ No] | Case Type |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |

| | |
|---|---|
| List the magazines & newspapers you read. | Educational |
| List the civic clubs, societies, unions, and political groups you and your spouse have joined. | None |
| Do you have a physical, or other inability that would keep you from serving as a juror? If yes, please describe | No |

# INSTRUCTIONS TO JURORS

**The attached questionnaire must be answered by you. The answers will assist the judge and lawyers in selecting a jury. Answer all the questions to the best of your ability. There are no right or wrong answers. To answer correctly you must answer honestly.**

**We need your help so that we can select a fair and impartial jury in this case. Only the judge and lawyers will know your name. Do not assume anything from these questions. The fact they are being asked does not necessarily have anything to do with the evidence that you will hear.**

**The judge and lawyers know that every person has beliefs and prejudices concerning many things. You should answer with your true feelings, whatever they may be. Do not assume that any of your answers will qualify you or disqualify you from serving on this jury.**

**Please fully answer each question to the best of your ability. Write or print clearly. You must not ask anyone for help. Do the best you can.**

**If you cannot answer a question because you do not understand it, write "Do Not Understand" in the margin next to the question. If you cannot answer because you do not know, write "Do Not Know" in the margin next to the question. If you want to explain your answer do so briefly in the margin next to the question. If for any reason you do not want to answer any of the questions asked, please write the word "PRIVATE" next to the question and we will take this matter up with you privately.**

**We are all certain that you understand the importance of juries to our American system of justice. We are confident that you will not try to avoid your duty as a citizen to serve if it is at all possible to do so. Without your help our courts cannot operate properly under the Constitution.**

**An Explanation Sheet is provided for you at the end of the questionnaire to answer questions more fully. Rather than leaving out information, please turn to the end and put your answers on the explanation sheet provided.**

**Because your answers are part of the jury selection process and become part of the records of this court, your answers must be truthful and under penalty of perjury.**

# JUROR QUESTIONNAIRE

**Juror #:** 013

1. **Full Name:** Freddy R. Delgado **Gender:** ☑ Male ☐ Female **Age:** 41

2. **What is your race?** Hispanic

3. **City of Residence:** Sugar Land **Years There:** 13 **Birth Place:** New Jersey

4. **What is your zip code?** 77478

5. **Who is your employer and what is your job (If unemployed/retired, what and where was your last job)?**
Houston ISD Principal

6. **For how many years have/did you worked there?** 5

7. **Describe your job duties or responsibilities:** Oversee 750 students, and 65 staff members to ensure that students are receiving the best education possible.

8. **What jobs have you held in the past?** Curriculum Specialist, Bilingual Coordinator, Teacher.

9. **Have you ever been laid off from a job?** ☐ YES ☑ NO
**If YES, how long ago?**

10. **Have you or your immediate family ever been affected by any type of layoff or downsizing?**
☐ YES ☑ NO
**If YES, please explain:**

11. **Have you ever been responsible for hiring, firing, or supervising employees?** ☑ YES ☐ NO

12. **How far did you go in school [If college or post-college, name the school(s) and any degrees received]?**
University of Puerto Rico - BA in Education
Stephen F Austin State University - MEd Education

13. **Current marital status:** divorced **If married, for how long?** N/A **How many times?** N/A

14. **Spouse's Name:** N/A **Spouse's Birth Place:** N/A

15. **Who is your spouse/partner's employer and what is this person's job (if unemployed/retired, what and where was this person's last job)?** N/A

Juror Number 313

16. What jobs has this person held in the past? N/A

17. Please list the sex, age, and occupation for each of your children and step-children:
Male, 14, Student

18. List all governments and government agencies (do not include law enforcement or military) that you and your relatives have worked for and tell us who held this job, what governmental unit, and the type of work:

19. Have you, any family members, or friends ever been employed by or applied for a job with any law enforcement agency? ☑ YES ☐ NO

If YES:

a) Were you, your family member, or friend hired? Yes

b) What job did you, your family member, or friend apply for and/or have? Police Officer

c) When did you, your family member, or friend apply for and/or have this job? 7yrs. ago.

d) Do you, your family member, or friend still hold this job today? ☐ YES ☑ NO

If NO, when and how did that employment end? Promoted to Justice Department in Puerto Rico

20. Have you or has anyone close to you ever had a negative experience dealing with law enforcement officers at the local or federal level (such as the police, FBI, INS, IRS, etc)? ☐ YES ☑ NO

If YES, please describe:

If YES, what is your opinion toward that agency now?

21. Have you or has anyone close to you ever had a negative experience dealing with the United States government or any governmental agency? ☐ YES ☑ NO

If YES, please describe:

If YES, what is your opinion toward that institution or agency now?

22. Have you or any family members ever owned your (their) own business? ☐ YES ☑ NO

If YES, please tell us what type of business and is the business still open?

23. Have you ever worked for a large corporation? ☐ YES ☑ NO

If YES:

a) What corporation(s) did you work for and when? N/A

N/A b) Are (were) you satisfied with your work at the corporation? ☐ YES ☐ NO

N/A c) Have you ever had a bad experience with a large corporation? ☐ YES ☐ NO

If YES, please explain.

24. What are your opinions about the compensation that executives of large corporations receive?

No opinion.

25. Have you had any education, training or experience in: accounting, bookkeeping, business, business management, finance, corporate finance, investment banking, law (criminal and/or civil), ethics, law enforcement, marketing, or stock trading? ☐ YES ☑ NO

If YES, please describe your education training or experience: N/A

26. Do you know anyone who works for the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☑ NO

If YES, whom do you know and what is the nature of your relationship with that person? N/A

27. Have you ever had any dealings with any person in the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☑ YES ☐ NO

If YES, describe the nature of those dealings and when they occurred. Child Support 2004

28. Do you know (on a personal, professional, or casual basis) any attorneys or judges? ☐ YES ☑ NO

If YES:

a) Please identify whom you know and what his or her job is. N/A

b) How do you know this person (these people)? N/A

c) What is the nature of your relationship with this person (these people)? N/A

29. Have you ever sued or been sued? ☐ YES ☑ NO

If YES, please tell us if you were the plaintiff (the party suing) or the defendant (the party being sued), the type of case, and the outcome: N/A

30. Have you served as a juror for a:

a) ☐ Criminal case ___ times ☐ Civil case ___ times ☐ Grand Jury ___ times ☑ Never served

b) What type(s) of criminal case(s)? N/A

c) What was the verdict(s)? N/A

d) Were you ever the foreperson? ☐ YES ☐ NO N/A

e) What did you like or dislike about serving on a jury? N/A

31. Have you ever filed a criminal complaint or appeared as a witness in any criminal case? ☐ YES ☑ NO

If YES, please explain (including the nature of the case, and whether you appeared as a witness for the prosecution or for the defense). N/A

32. Have you, any family members, or friends ever worked for the Arthur Andersen accounting firm?

☐ YES ☑ NO

If YES:

a) Who worked for Arthur Andersen? N/A

b) When and where did they work for Arthur Andersen? N/A

c) Describe the nature of their work for Arthur Andersen. N/A

33. Have you, any family members, or friends ever worked for or applied for work with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES:

a) Who worked for or applied for work with Enron or its subsidiaries? N/A

b) Were you or any family members or friends hired by Enron or its subsidiaries? N/A

c) When did you or any family members or friends hold/apply for this job? N/A

d) When and how did this employment terminate? N/A

34. Have you, any family members, or friends ever done business with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES, please describe the nature of that business, when it occurred, and who was involved.

N/A

35. Have you, any family members, or friends ever owned stock in Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES:

a) Approximately how many shares did you, your family member, or friend own? N/A

b) When did you, your family member, or friend purchase the shares? N/A

c) Did you, your family member, or friend ever sell the shares? If so, please identify when you sold, for what reason, and whether you made or lost money on the sale. N/A

36. Do you know anyone who lost their job or lost money in an investment, an IRA, 401K, or other retirement plan as a result of the bankruptcy of Enron? ☐ YES ☑ NO

If YES, please explain. N/A

37. Have you, any family members, or friends ever been employed by a company that has been affected by the Enron bankruptcy or the layoffs of Enron employees? ☐ YES ☑ NO

If YES, please explain. N/A

38. Do you know anyone, whom you have not mentioned above, who has been negatively affected or hurt in any way by what happened at Enron? ☐ YES ☑ NO

If YES, please tell us the name of the person and how they were affected. N/A

39. Do you have an opinion about the cause of the collapse of Enron? ☐ YES ☑ NO

a) If YES, what is your opinion? N/A

b) On what do you base your opinion? N/A

40. What do you think about the U.S. Government's investigation into the collapse of Enron?

No opinion.

41. Have you heard or read about any of the Enron cases? ☑ YES ☐ NO

If YES, please tell us the name of all sources from which you have heard or read about the Enron cases (such as the Houston Chronicle, Time Magazine, Channel 13 news, O'Reilly Factor, Rush Limbaugh radio show, talking with friends, family or co-workers, internet news sources, blogs, etc.)?

News

42. Have you read any books or seen any movies about Enron? ☐ YES ☑ NO

If YES, please describe the book(s) or movie(s) and tell us what you thought of that book or movie: N/A

43. Have you, your business, any family member, or your employer ever filed for bankruptcy?

☐ YES ☑ NO If YES, please tell us who filed and what happened. N/A

44. Who makes the financial decisions in your household? Me.

45. Do you currently, or have you ever, owned stocks (including mutual funds)? ☐ YES ☑ NO

46. Have you or your spouse lost a significant amount of money in the stock market in the past ten (10) years? ☐ YES ☑ NO If YES, please explain what happened. N/A

47. Which of the following words would describe you? Please check (✓) all that apply:

☐ Assertive
☐ Creative
☐ Impulsive
☐ Logical
☐ Private
☑ Religious
☐ Thoughtful
☐ Analytical
☐ Decisive
☐ Innovative
☑ Loyal
☑ Problem solver
☐ Skeptical
☑ Trusting
☐ Business-minded
☐ Detailed
☐ Judgmental
☐ Opinionated
☐ Pro-business
☐ Snap-decisions
☐ Visual
☑ Cautious
☑ Dedicated
☐ Law & Order
☐ Outspoken
☐ Pro-worker
☑ Strict
☐ Other: ____
☐ Compulsive
☐ Entrepreneur
☑ Leader
☑ Practical
☐ Pro-Government
☐ Technical

48. Please list (3) people that you admire the *most*:

(1) Father

(2) ____

(3) ____

49. Please list (3) people that you admire the *least*:

(1) ____

(2) ____

(3) ____

50. What do you enjoy doing in your spare time? Relaxing, vacations

51. Please list your (3) favorite television shows:
(1) CSI
(2) Alias
(3) NCIS

52. What courtroom or law-related television shows do you watch? Numbers, Cold Case, CSI

53. What sites on the Internet do you regularly visit? Bank, Hotmail.

54. What newspapers, magazines, or trade publications do you read? None

55. Which financial newspapers or magazines (such as the *Wall Street Journal*, *Business Week*, *Barrons*, *Economist*, *Forbes*, *Fortune*, *Money Magazine*, etc.), if any, do you read, and what financial programs, if any, do you watch on television? None.

56. Which one source do you get *most* of your news from? T.V.

57. Please list all unions or civic, social, political, professional, and religious groups or organizations to which you or your spouse/partner belong: Houston Area Association of Bilingual Education, Texas Association of Bilingual Education, National Association of Bilingual Education, ASCD.

58. Have you held leadership roles in any of these organizations? ☑ YES ☐ NO
If YES, what was the role? President of HAABE

59. Please tell us about any volunteer work you do (now or past): Volunteer at Church

60. On social issues, are you: ☐ Very conservative ☑ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

61. On economic issues are you: ☐ Very conservative ☑ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

62. Political party preference: ☐ Democrat ☑ Independent ☐ Republican ☐ Other: ____________

63. Other than a traffic ticket, have you ever been arrested for, charged with, or convicted of a crime?
☐ YES ☑ NO
If YES:
a) Describe the nature of the charge. N/A
b) Did this charge result in a conviction? N/A
c) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea? N/A

d) Do you feel you were treated fairly? N/A

64. Other than a traffic ticket, have any of your family members ever been arrested for, charged with, or convicted of a crime? ☐ YES ☑ NO

If YES:

a) What family member? N/A

b) Describe the nature of the charge. N/A

c) Did this charge result in a conviction? N/A

d) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea? N/A

e) Do you feel your family member was treated fairly? N/A

65. Which best describes your total yearly household income?

☐ Under $25,000 ☐ $25 - $50,000 ☑ $50 - $100,000 ☐ $100 - $250,000 ☐ More than $250,000

66. Religious Preference: Christian

67. Are you angry about what happened with Enron? ☐ YES ☑ NO

If YES, please explain. N/A

68. Of all the things you have seen, heard, or read about Enron, what stands out in your mind? Nothing.

69. Do you, any family member, or friend know or have any connection with any of the defendants or their families in this case?

| | |
|---|---|
| a) Kenneth Lay | ☐ YES ☑ NO |
| b) Jeffrey Skilling | ☐ YES ☑ NO |
| c) Richard Causey | ☐ YES ☑ NO |

If you have answered YES as to any of the defendants, please explain. N/A

70. Do you have an opinion about any of the following people?

a) Kenneth Lay (former Chairman and Chief Executive Officer of Enron) ☐ YES ☑ NO

If YES, what is your opinion? N/A

On what do you base your opinion? N/A

b) **Jeffrey Skilling** (former Chief Operating Officer, President, Chief Executive Officer of Enron)
☐ YES ☑ NO
If YES, what is your opinion? N/A

On what do you base your opinion? N/A

c) **Richard Causey** (former Chief Accounting Officer of Enron) ☐ YES ☑ NO
If YES, what is your opinion? N/A

On what do you base your opinion? N/A

d) **Sherron Watkins** (former employee of Enron) ☐ YES ☑ NO
If YES, what is your opinion? N/A

On what do you base your opinion? N/A

71. **Based on anything you have heard, read, or been told do you have any opinion about the guilt or innocence of any of the following people:**

a) Richard Causey ☐ YES ☑ NO
b) Jeffrey Skilling ☐ YES ☑ NO
c) Kenneth Lay ☐ YES ☑ NO

If you have answered YES as to any of these people, please explain. N/A

72. The Judge in this case will instruct you that the indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

73. Notwithstanding the instructions that the judge will give you at the trial, would any opinion you may have formed regarding Enron or any of the defendants prevent you from impartially considering the evidence presented during the trial of these three defendants?

a) Kenneth Lay ☐ YES ☑ NO ☐ UNSURE

b) Jeffrey Skilling ☐ YES ☑ NO ☐ UNSURE

c) Richard Causey ☐ YES ☑ NO ☐ UNSURE

If YES or UNSURE as to any of these people, please explain. N/A

74. Is there anything else you feel is important for the court to know about you? NO.

75. Would you like to serve on this jury? ☐ YES ☑ NO ☐ DON'T KNOW

Please explain your answer. I do not feel qualified to be a juror on a company I know little about.

76. Do you have a physical or other disability that would keep you from serving as a juror?

☐ YES ☑ NO If YES, please explain. N/A

77. This trial will begin on January 17, 2006, and may last as long as 6 months. You may rely upon the jury being in session Monday through Thursday from 8:30 am until 5:00 pm. The court will not be in session during federal holidays. A trial of this length is a hardship on virtually every juror. Would serving as a juror in this case cause such a severe hardship that it would affect your ability to be a fair and impartial juror? ☑ YES ☐ NO

If YES, please explain. I am a school principal and I strongly believe that I need to be at school in order to assure students are learning.

## OATH

I hereby swear or affirm that all of my answers in this questionnaire are true and correct to the best of my ability.

Juror's Signature

11-16-05
Date

Juror Number 013

# EXPLANATION SHEET

**JUROR QUESTIONNAIRE**

20
(For Official Use Only)

**This form helps the court select a jury. Please answer all blanks *in print and in black ink.* If the question does not apply to you, please write "NA" in it. The lawyers are entitled to information about potential jurors, but if you choose not to answer a question for private reasons, please draw a single line through it.**

| | | | |
|---|---|---|---|
| Name<br>CAROLYN L. KUCHERA | Age<br>49 | Birth Place<br>ARLINGTON, VA | Religious Preference<br>PRESBYTERIAN |

| | | | | |
|---|---|---|---|---|
| City of Residence<br>HOUSTON | Years There<br>40+ | Employer (ex if retired)<br>NOBLE DRILLING | Type of Work<br>PAYROLL MGR | Years<br>4½ |

| | | | | | |
|---|---|---|---|---|---|
| Children's Ages & Sex<br>NA | | | | | Grown Children's Type of Work |
| | | | | | |

| | | |
|---|---|---|
| Marital Status<br>SINGLE | Spouse's Name | Spouse's Birth Place |

| | | |
|---|---|---|
| Spouse's Employer<br>NA | Type of Work | Years |

| | | | |
|---|---|---|---|
| List governments that you & relatives have worked for. List law enforcement but not the military. | Who?<br>FATHER | Governmental Unit<br>ROCKWELL/NASA | Type of Work<br>ENGINEER |

| | | | |
|---|---|---|---|
| Have you served in the military? | Yes [✓ No] | Branch & Highest Rank | Years |

| School Level | School and City | Subject Studied | Degree |
|---|---|---|---|
| High School | CLEAR CREEK/LEAGUE CITY TX | GENERAL | YES |
| College | TEXAS A&M/COLLEGE STAT TX | PSYCHOLOGY/MGMT | YES-BS |
| Post College | HOUSTON BAPTIST/HOUSTON TX | HUMAN RESOURCES | YES-MS |

Do you have any Legal, Para-Legal, or Medical Training? Yes [✓ No]
If yes, describe

| | | | |
|---|---|---|---|
| Civil Suits | Have you sued or been sued? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | [✓ Yes] No<br>[✓ Yes] No | Case Type INSURANCE FRAUD, ILLEGAL ALIENS |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |
| Criminal Actions | Have you been charged criminally, other than a traffic ticket? | Yes [✓ No] | Case Type |
| | Have you made a criminal complaint? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes No | Case Type |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |

| | |
|---|---|
| List the magazines & newspapers you read. | HOUSTON CHRONICLE, PEOPLE |
| List the civic clubs, societies, unions, and political groups you and your spouse have joined. | NONE |
| Do you have a physical, or other inability that would keep you from serving as a juror? If yes, please describe. | NO |

Juror Number 020

# INSTRUCTIONS TO JURORS

The attached questionnaire must be answered by you. The answers will assist the judge and lawyers in selecting a jury. Answer all the questions to the best of your ability. There are no right or wrong answers. To answer correctly you must answer honestly.

We need your help so that we can select a fair and impartial jury in this case. Only the judge and lawyers will know your name. Do not assume anything from these questions. The fact they are being asked does not necessarily have anything to do with the evidence that you will hear.

The judge and lawyers know that every person has beliefs and prejudices concerning many things. You should answer with your true feelings, whatever they may be. Do not assume that any of your answers will qualify you or disqualify you from serving on this jury.

Please fully answer each question to the best of your ability. Write or print clearly. You must not ask anyone for help. Do the best you can.

If you cannot answer a question because you do not understand it, write "Do Not Understand" in the margin next to the question. If you cannot answer because you do not know, write "Do Not Know" in the margin next to the question. If you want to explain your answer do so briefly in the margin next to the question. If for any reason you do not want to answer any of the questions asked, please write the word "PRIVATE" next to the question and we will take this matter up with you privately.

We are all certain that you understand the importance of juries to our American system of justice. We are confident that you will not try to avoid your duty as a citizen to serve if it is at all possible to do so. Without your help our courts cannot operate properly under the Constitution.

An Explanation Sheet is provided for you at the end of the questionnaire to answer questions more fully. Rather than leaving out information, please turn to the end and put your answers on the explanation sheet provided.

Because your answers are part of the jury selection process and become part of the records of this court, your answers must be truthful and under penalty of perjury.

Juror Number 020

# JUROR QUESTIONNAIRE

Juror #: 020

1. Full Name: CAROLYN L. KUCHERA Gender: ☐ Male ☒ Female Age: 49
2. What is your race? CAUCASIAN
3. City of Residence: HOUSTON Years There: 40+ Birth Place: ARLINGTON, VA
4. What is your zip code? 77079
5. Who is your employer and what is your job (If unemployed/retired, what and where was your last job)? NOBLE DRILLING. PAYROLL MANAGER
6. For how many years have/did you worked there? 4½
7. Describe your job duties or responsibilities: OVERSEE CORPORATE, DOMESTIC AND INTERNATIONAL PAYROLL FOR DOMESTIC, EXPATRIATE, & FOREIGN NATIONAL EMPLOYEES.
8. What jobs have you held in the past? PAYROLL SUPERVISOR, HUMAN RESOURCE COORDINATOR, ACCOUNTS PAYABLE MANAGER, TELLER
9. Have you ever been laid off from a job? ☒ YES ☐ NO
   If YES, how long ago? FEB 2001
10. Have you or your immediate family ever been affected by any type of layoff or downsizing? ☒ YES ☐ NO
    If YES, please explain: I HAVE BEEN LAID OFF FIVE TIMES FROM 1991-2001 DUE TO BANKRUPTCY, COMPANY REORGANIZATION OR DOWNSIZING BY MY EMPLOYER. MY SISTER HAS BEEN LAID OFF FROM HER JOB ONCE.
11. Have you ever been responsible for hiring, firing, or supervising employees? ☒ YES ☐ NO
12. How far did you go in school [If college or post-college, name the school(s) and any degrees received]? HOUSTON BAPTIST UNIVERSITY - M.S. HUMAN RESOURCE MANAGEMENT
13. Current marital status: SINGLE If married, for how long? 2 YRS How many times? 1
14. Spouse's Name: N/A Spouse's Birth Place: AUSTIN, TX
15. Who is your spouse/partner's employer and what is this person's job (If unemployed/retired, what and where was this person's last job)? NA

16. What jobs has this person held in the past? NA

17. Please list the sex, age, and occupation for each of your children and step-children:
NA

18. List all governments and government agencies (do not include law enforcement or military) that you and your relatives have worked for and tell us who held this job, what governmental unit, and the type of work: FATHER - PAYLOAD ENGINEER FOR ROCKWELL, INT. & NASA

19. Have you, any family members, or friends ever been employed by or applied for a job with any law enforcement agency? ☐ YES ☒ NO
If YES:
a) Were you, your family member, or friend hired?
b) What job did you, your family member, or friend apply for and/or have?
c) When did you, your family member, or friend apply for and/or have this job?
d) Do you, your family member, or friend still hold this job today? ☐ YES ☐ NO
If NO, when and how did that employment end?

20. Have you or has anyone close to you ever had a negative experience dealing with law enforcement officers at the local or federal level (such as the police, FBI, INS, IRS, etc)? ☐ YES ☒ NO
If YES, please describe:
If YES, what is your opinion toward that agency now?

21. Have you or has anyone close to you ever had a negative experience dealing with the United States government or any governmental agency? ☐ YES ☒ NO
If YES, please describe:
If YES, what is your opinion toward that institution or agency now?

22. Have you or any family members ever owned your (their) own business? ☐ YES ☒ NO

Juror Number 020

If YES, please tell us what type of business and is the business still open? ______

23. Have you ever worked for a large corporation? ☒ YES ☐ NO

If YES:

a) What corporation(s) did you work for and when?

UNIVERSITY SAVINGS ASSOCIATION 1984-1991

NOBLE DRILLING 2001 - PRESENT

b) Are (were) you satisfied with your work at the corporation? ☒ YES ☐ NO

c) Have you ever had a bad experience with a large corporation? ☐ YES ☒ NO

If YES, please explain. ______

24. What are your opinions about the compensation that executives of large corporations receive?

EXCESSIVE, HOWEVER, BECAUSE OF MY JOB, I KNOW IT IS AN ACCEPTED BUSINESS PRACTICE & I HAVE BECOME SORTA IMMUNE (UNAFFECTED) ABOUT IT.

25. Have you had any education, training or experience in: accounting, bookkeeping, business, business management, finance, corporate finance, investment banking, law (criminal and/or civil), ethics, law enforcement, marketing, or stock trading? ☒ YES ☐ NO

If YES, please describe your education training or experience: COLLEGE COURSES IN BUSINESS, ACCTG, MGMT, BUSINESS LAW. WORK EXPERIENCE WITH THE SAME.

26. Do you know anyone who works for the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☒ NO

If YES, whom do you know and what is the nature of your relationship with that person? ______

27. Have you ever had any dealings with any person in the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☒ NO

If YES, describe the nature of those dealings and when they occurred. ______

28. Do you know (on a personal, professional, or casual basis) any attorneys or judges? ☐ YES ☒ NO

If YES:

a) Please identify whom you know and what his or her job is.

NA

b) How do you know this person (these people)?

NA

c) What is the nature of your relationship with this person (these people)?

NA

29. Have you ever sued or been sued? ☐ YES ☒ NO

If YES, please tell us if you were the plaintiff (the party suing) or the defendant (the party being sued), the type of case, and the outcome:

30. Have you served as a juror for a:

a) ☐ Criminal case 0 times ☒ Civil case 2 times ☐ Grand Jury 0 times ☐ Never served

b) What type(s) of criminal case(s)?

c) What was the verdict(s)?

d) Were you ever the foreperson? ☐ YES ☒ NO

e) What did you like or dislike about serving on a jury? I LIKE TO UNRAVEL PUZZLES & FIND SOLUTIONS SO I FIND THE PROCESS INTERESTING

31. Have you ever filed a criminal complaint or appeared as a witness in any criminal case? ☐ YES ☒ NO

If YES, please explain (including the nature of the case, and whether you appeared as a witness for the prosecution or for the defense).

32. Have you, any family members, or friends ever worked for the Arthur Andersen accounting firm?

☐ YES ☒ NO

If YES:

a) Who worked for Arthur Andersen?

b) When and where did they work for Arthur Andersen?

c) Describe the nature of their work for Arthur Andersen.

33. Have you, any family members, or friends ever worked for or applied for work with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES:

a) Who worked for or applied for work with Enron or its subsidiaries? ______________

b) Were you or any family members or friends hired by Enron or its subsidiaries? ______________

c) When did you or any family members or friends hold/apply for this job? ______________

d) When and how did this employment terminate? ______________

34. Have you, any family members, or friends ever done business with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES, please describe the nature of that business, when it occurred, and who was involved. ______________

35. Have you, any family members, or friends ever owned stock in Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES:

a) Approximately how many shares did you, your family member, or friend own? ______________

b) When did you, your family member, or friend purchase the shares? ______________

c) Did you, your family member, or friend ever sell the shares? If so, please identify when you sold, for what reason, and whether you made or lost money on the sale. ______________

36. Do you know anyone who lost their job or lost money in an investment, an IRA, 401K, or other retirement plan as a result of the bankruptcy of Enron? ☐ YES ☒ NO

If YES, please explain. ______________

37. Have you, any family members, or friends ever been employed by a company that has been affected by the Enron bankruptcy or the layoffs of Enron employees? ☐ YES ☒ NO

If YES, please explain. ______

38. Do you know anyone, whom you have not mentioned above, who has been negatively affected or hurt in any way by what happened at Enron? ☐ YES ☒ NO

If YES, please tell us the name of the person and how they were affected. ______

39. Do you have an opinion about the cause of the collapse of Enron? ☒ YES ☐ NO

a) If YES, what is your opinion? NOT ENOUGH CORPORATE CONTROLS OR EFFECTIVE AUDIT PROCEDURES TO PREVENT MISMANAGEMENT OF CORPORATE ASSETS

b) On what do you base your opinion? MOSTLY BECAUSE OF SARBANES-OXLEY REGULATIONS THAT ARE NOW IMPACTING MY JOB I THINK THE INTENT IS GOOD BUT DO GET FRUSTRATED WITH THE FREQUENCY OF THE AUDITS.

40. What do you think about the U.S. Government's investigation into the collapse of Enron?

I THINK THAT THE GOVERNMENT NEEDED TO INVESTIGATE IN ORDER FOR IT NOT TO HAPPEN AGAIN.

41. Have you heard or read about any of the Enron cases? ☒ YES ☐ NO

If YES, please tell us the name of all sources from which you have heard or read about the Enron cases (such as the Houston Chronicle, Time Magazine, Channel 13 news, O'Reilly Factor, Rush Limbaugh radio show, talking with friends, family or co-workers, Internet news sources, blogs, etc.)? ______

HOUSTON CHRONICLE, LOCAL NEWS STATIONS INCL. CHANNEL 13

42. Have you read any books or seen any movies about Enron? ☐ YES ☒ NO

If YES, please describe the book(s) or movie(s) and tell us what you thought of that book or movie: __

43. Have you, your business, any family member, or your employer ever filed for bankruptcy?

☐ YES ☒ NO If YES, please tell us who filed and what happened. __________

44. Who makes the financial decisions in your household? MYSELF

45. Do you currently, or have you ever, owned stocks (including mutual funds)? ☒ YES ☐ NO

46. Have you or your spouse lost a significant amount of money in the stock market in the past ten (10) years? ☐ YES ☒ NO If YES, please explain what happened. __________

47. Which of the following words would describe you? Please check (✓) all that apply:

☐ Assertive ☑ Analytical ☐ Business-minded ☑ Cautious ☐ Compulsive
☐ Creative ☐ Decisive ☑ Detailed ☐ Dedicated ☐ Entrepreneur
☐ Impulsive ☐ Innovative ☐ Judgmental ☐ Law & Order ☐ Leader
☑ Logical ☑ Loyal ☐ Opinionated ☐ Outspoken ☑ Practical
☑ Private ☑ Problem solver ☐ Pro-business ☐ Pro-worker ☐ Pro-Government
☐ Religious ☐ Skeptical ☐ Snap-decisions ☐ Strict ☑ Technical
☑ Thoughtful ☑ Trusting ☑ Visual ☐ Other: __________

48. Please list (3) people that you admire the *most*:

DO NOT KNOW

(1) __________
(2) __________
(3) __________

49. Please list (3) people that you admire the *least*:

DO NOT KNOW

(1) __________
(2) __________
(3) __________

50. What do you enjoy doing in your spare time? READING, EXERCISE, TV, MOVIES

51. **Please list your (3) favorite television shows:**

**(1)** LOST

**(2)** ALIAS

**(3)** SURVIVOR

52. **What courtroom or law-related television shows do you watch?** LAW & ORDER CSI, NCIS

53. **What sites on the Internet do you regulady visit?** NONE

54. **What newspapers, magazines, or trade publications do you read?** HOUSTON CHRONICLE, PEOPLE, REAL SIMPLE, PAY TECH

55. **Which financial newspapers or magazines (such as the *Wall Street Journal*, *Business Week*, *Barrons*, *Economist*, *Forbes*, *Fortune*, *Money Magazine*, etc.), if any, do you read, and what financial programs, if any, do you watch on television?** NONE

56. **Which *one* source do you get *most* of your news from?** RADIO

57. **Please list all unions or civic, social, political, professional, and religious groups or organizations to which you or your spouse/partner belong:** AMERICAN PAYROLL ASSOC.

58. **Have you held leadership roles in any of these organizations?** ☐ YES ☒ NO

**If YES, what was the role?**

59. **Please tell us about any volunteer work you do (now or past):** HOUSTON PROUD, SALVATION ARMY

60. **On social issues, are you:** ☐ Very conservative ☒ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

61. **On economic issues are you:** ☐ Very conservative ☒ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

62. **Political party preference:** ☐ Democrat ☐ Independent ☐ Republican ☒ Other: NO PREFERENCE

63. **Other than a traffic ticket, have you ever been arrested for, charged with, or convicted of a crime?**

☐ YES ☒ NO

**If YES:**

**a) Describe the nature of the charge.**

**b) Did this charge result in a conviction?**

**c) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?**

**d) Do you feel you were treated fairly?** ____________________

____________________

**64. Other than a traffic ticket, have any of your family members ever been arrested for, charged with, or convicted of a crime?** ☐ **YES** ☒ **NO**

**If YES:**

**a) What family member?** ____________________

**b) Describe the nature of the charge.** ____________________

____________________

**c) Did this charge result in a conviction?** ____________________

**d) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?** ____________________

____________________

**e) Do you feel your family member was treated fairly?** ____________________

____________________

**65. Which best describes your total yearly household income?**

☐ **Under $25,000** ☐ **$25 - $50,000** ☒ **$50 - $100,000** ☐ **$100 - $250,000** ☐ **More than $250,000**

**66. Religious Preference:** PRESBYTERIAN

**67. Are you angry about what happened with Enron?** ☒ **YES** ☐ **NO**

**If YES, please explain.** IT MAKES ME ANGRY THAT SO MANY PEOPLE LOST THEIR JOBS AND THEIR RETIREMENT SAVINGS.

INVOLUNTARY

**68. Of all the things you have seen, heard, or read about Enron, what stands out in your mind?** I THINK THAT THE LOSS OF THE 401K SAVINGS MADE THE MOST IMPACT ON ME ESPECIALLY BECAUSE I HAVE BEEN FORCED TO FORFEIT MY OWN 401K FUNDS TO SURVIVE LAYOFFS.

**69. Do you, any family member, or friend know or have any connection with any of the defendants or their families in this case?**

**a) Kenneth Lay** ☐ **YES** ☒ **NO**

**b) Jeffrey Skilling** ☐ **YES** ☒ **NO**

**c) Richard Causey** ☐ **YES** ☒ **NO**

**If you have answered YES as to any of the defendants, please explain.** ____________________

____________________

____________________

____________________

____________________

**70. Do you have an opinion about any of the following people?**

**a) Kenneth Lay (former Chairman and Chief Executive Officer of Enron)** ☐ **YES** ☐ **NO**

PLEASE SEE #74

**If YES, what is your opinion?** ______________________________

______________________________

______________________________

______________________________

**On what do you base your opinion?** ______________________________

______________________________

b) **Jeffrey Skilling (former Chief Operating Officer, President, Chief Executive Officer of Enron)**

☐ **YES** ☐ **NO**

**If YES, what is your opinion?** ______________________________

______________________________

______________________________

______________________________

**On what do you base your opinion?** ______________________________

______________________________

c) **Richard Causey (former Chief Accounting Officer of Enron)** ☐ **YES** ☐ **NO**

**If YES, what is your opinion?** ______________________________

______________________________

______________________________

______________________________

**On what do you base your opinion?** ______________________________

______________________________

d) **Sherron Watkins (former employee of Enron)** ☐ **YES** ☐ **NO**

**If YES, what is your opinion?** ______________________________

______________________________

______________________________

______________________________

**On what do you base your opinion?** ______________________________

______________________________

71. **Based on anything you have heard, read, or been told do you have any opinion about the guilt or innocence of any of the following people:**

a) **Richard Causey** ☐ **YES** ☒ **NO**
b) **Jeffrey Skilling** ☐ **YES** ☒ **NO**
c) **Kenneth Lay** ☐ **YES** ☒ **NO**

**If you have answered YES as to any of these people, please explain.** ______________________________

______________________________

______________________________

72. The Judge in this case will instruct you that the indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

73. Notwithstanding the instructions that the judge will give you at the trial, would any opinion you may have formed regarding Enron or any of the defendants prevent you from impartially considering the evidence presented during the trial of these three defendants?

| | | | |
|---|---|---|---|
| a) Kenneth Lay | ☐ YES | ☒ NO | ☐ UNSURE |
| b) Jeffrey Skilling | ☐ YES | ☒ NO | ☐ UNSURE |
| c) Richard Causey | ☐ YES | ☒ NO | ☐ UNSURE |

If YES or UNSURE as to any of these people, please explain. ______________________

74. Is there anything else you feel is important for the court to know about you? I LIVED & WORKED IN CHARLOTTE, NC FR. 1999-2001. I WAS LAID OFF IN 2/2001 & RETURNED TO HOUSTON WHERE I SPENT MOST OF MY TIME SEEKING EMPLOYMENT. MY SISTER PASSED AWAY IN FEB '03 & IN THE NEXT 1½ YRS. I ALMOST LOST MY SISTER, MY DAD & A CLOSE FRIEND.

75. Would you like to serve on this jury? ☐ YES ☐ NO ☒ DON'T KNOW

Please explain your answer. I DON'T REALLY KNOW IF I WANT TO BE ON THIS JURY DUE TO THE TIME IT WILL TAKE. HOWEVER DUE TO THE THINGS MENTIONED IN #74, I DO KNOW THAT I WAS NOT FULLY AWARE OF ALL THE FACTS REGARDING ENRON'S FALL & THE MEDIA COVERAGE.

W
F
I
S
–
&
P

76. Do you have a physical or other disability that would keep you from serving as a juror?

☐ YES ☒ NO If YES, please explain. ______

77. This trial will begin on January 17, 2006, and may last as long as 6 months. You may rely upon the jury being in session Monday through Thursday from 8:30 am until 5:00 pm. The court will not be in session during federal holidays. A trial of this length is a hardship on virtually every juror. Would serving as a juror in this case cause such a severe hardship that it would affect your ability to be a fair and impartial juror? ☐ YES ☒ NO

If YES, please explain. ______

## OATH

I hereby swear or affirm that all of my answers in this questionnaire are true and correct to the best of my ability.

Carolyn L. Kuchen 11.19.05

Juror's Signature Date

Juror Number 020

# EXPLANATION SHEET

38
(For Official Use Only)

JUROR QUESTIONNAIRE

**This form helps the court select a jury. Please answer all blanks *in print and in black ink.* If the question does not apply to you, please write "NA" in it. The lawyers are entitled to information about potential jurors, but if you choose not to answer a question for private reasons, please draw a single line through it.**

| | | | | |
|---|---|---|---|---|
| Name<br>Erin Lankford | Age<br>30 | Birth Place<br>Lubbock, TX | Religious Preference<br>——— | |
| City of Residence<br>Houston | Years There<br>7 | Employer (ex if retired)<br>The Monarch School | Type of Work<br>Special Ed Teacher | Years<br>3 |
| Children's Ages & Sex<br>NA | | | Grown Children's Type of Work<br>NA | |
| Marital Status<br>SINGLE | Spouse's Name<br>NA | | Spouse's Birth Place<br>NA | |
| Spouse's Employer<br>NA | Type of Work<br>NA | | | Years<br>NA |
| List governments that you & relatives have worked for. List law enforcement but not the military. | Who? MHMRA<br>Mental Health mental Retardation | Governmental Unit<br>ECI Early Childhood Intervention | Type of Work<br>Social work | |
| Have you served in the military? | Yes [✓ No] | Branch & Highest Rank<br>NA | | Years NA |

| School Level | School and City | Subject Studied | Degree |
|---|---|---|---|
| High School | Monterey High, Lubbock, TX | | |
| College | Texas Tech University, Lubbock, TX | Human Development | BS |
| Post College | | | |

Do you have any Legal, Para-Legal, or Medical Training? Yes [✓ No]
If yes, describe

| | | | |
|---|---|---|---|
| Civil Suits | Have you sued or been sued? | Yes [✓ No] | Case Type NA |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes [✓ No] NA | Case Type<br>NA |
| | Have you been a witness in court? | Yes [✓ No] | Case Type NA |
| Criminal Actions | Have you been charged criminally, other than a traffic ticket? | Yes [✓ No] | Case Type NA |
| | Have you made a criminal complaint? | Yes [✓ No] | Case Type NA |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes ~~No~~ | Case Type NA |
| | Have you been a witness in court? | Yes [✓ No] | Case Type NA |

| | |
|---|---|
| List the magazines & newspapers you read. | Houston Chronicle |
| List the civic clubs, societies, unions, and political groups you and your spouse have joined. | N/A |
| Do you have a physical, or other inability that would keep you from serving as a juror? If yes, please describe. | NA |

Juror Number 038

# INSTRUCTIONS TO JURORS

The attached questionnaire must be answered by you. The answers will assist the judge and lawyers in selecting a jury. Answer all the questions to the best of your ability. There are no right or wrong answers. To answer correctly you must answer honestly.

We need your help so that we can select a fair and impartial jury in this case. Only the judge and lawyers will know your name. Do not assume anything from these questions. The fact they are being asked does not necessarily have anything to do with the evidence that you will hear.

The judge and lawyers know that every person has beliefs and prejudices concerning many things. You should answer with your true feelings, whatever they may be. Do not assume that any of your answers will qualify you or disqualify you from serving on this jury.

Please fully answer each question to the best of your ability. Write or print clearly. You must not ask anyone for help. Do the best you can.

If you cannot answer a question because you do not understand it, write "Do Not Understand" in the margin next to the question. If you cannot answer because you do not know, write "Do Not Know" in the margin next to the question. If you want to explain your answer do so briefly in the margin next to the question. If for any reason you do not want to answer any of the questions asked, please write the word "PRIVATE" next to the question and we will take this matter up with you privately.

We are all certain that you understand the importance of juries to our American system of justice. We are confident that you will not try to avoid your duty as a citizen to serve if it is at all possible to do so. Without your help our courts cannot operate properly under the Constitution.

An Explanation Sheet is provided for you at the end of the questionnaire to answer questions more fully. Rather than leaving out information, please turn to the end and put your answers on the explanation sheet provided.

Because your answers are part of the jury selection process and become part of the records of this court, your answers must be truthful and under penalty of perjury.

# JUROR QUESTIONNAIRE

**Juror #:** 038

1. **Full Name:** Erin Lankford **Gender:** ☐ Male ☒ Female **Age:** 31
2. **What is your race?** Caucasian
3. **City of Residence:** Houston **Years There:** 7 **Birth Place:** Lubbock, TX
4. **What is your zip code?** 77098
5. **Who is your employer and what is your job (If unemployed/retired, what and where was your last job)?**
The Monarch School - Teacher
6. **For how many years have/did you worked there?** 4
7. **Describe your job duties or responsibilities:** Teacher - participate in students' treatment plans of therapeutic day school.
8. **What jobs have you held in the past?** Social work, early Childhood intervention, non-profit development positions
9. **Have you ever been laid off from a job?** ☐ YES ☒ NO
**If YES, how long ago?**
10. **Have you or your immediate family ever been affected by any type of layoff or downsizing?**
☐ YES ☒ NO
**If YES, please explain:**
11. **Have you ever been responsible for hiring, firing, or supervising employees?** ☐ YES ☒ NO
12. **How far did you go in school [If college or post-college, name the school(s) and any degrees received]?**
Texas Tech University - Bachelor of Science
13. **Current marital status:** S **If married, for how long?** **How many times?**
14. **Spouse's Name:** N/A **Spouse's Birth Place:** —
15. **Who is your spouse/partner's employer and what is this person's job (if unemployed/retired, what and where was this person's last job)?** N/A

16. What jobs has this person held in the past? N/A

17. Please list the sex, age, and occupation for each of your children and step-children:
N/A

18. List all governments and government agencies (do not include law enforcement or military) that you and your relatives have worked for and tell us who held this job, what governmental unit, and the type of work:
Mental Health Mental Retardation - Early Childhood Intervention Program
I was employed there. - Social Work

19. Have you, any family members, or friends ever been employed by or applied for a job with any law enforcement agency? ☐ YES ☒ NO
If YES:
a) Were you, your family member, or friend hired?
b) What job did you, your family member, or friend apply for and/or have?
c) When did you, your family member, or friend apply for and/or have this job?
d) Do you, your family member, or friend still hold this job today? ☐ YES ☐ NO
If NO, when and how did that employment end?

20. Have you or has anyone close to you ever had a negative experience dealing with law enforcement officers at the local or federal level (such as the police, FBI, INS, IRS, etc)? ☐ YES ☒ NO
If YES, please describe:
If YES, what is your opinion toward that agency now?

21. Have you or has anyone close to you ever had a negative experience dealing with the United States government or any governmental agency? ☐ YES ☒ NO
If YES, please describe:
If YES, what is your opinion toward that institution or agency now?

22. Have you or any family members ever owned your (their) own business? ☒ YES ☐ NO

If YES, please tell us what type of business and is the business still open?

Health & Fitness studio - not still open

23. Have you ever worked for a large corporation? ☒ YES ☐ NO

If YES:

a) What corporation(s) did you work for and when? Reliant Energy, under CoreStaff - staffing agency

b) Are (were) you satisfied with your work at the corporation? ☐ YES ☒ NO

c) Have you ever had a bad experience with a large corporation? ☐ YES ☒ NO

If YES, please explain.

24. What are your opinions about the compensation that executives of large corporations receive?

none

25. Have you had any education, training or experience in: accounting, bookkeeping, business, business management, finance, corporate finance, investment banking, law (criminal and/or civil), ethics, law enforcement, marketing, or stock trading? ☐ YES ☒ NO

If YES, please describe your education training or experience:

26. Do you know anyone who works for the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☒ NO

If YES, whom do you know and what is the nature of your relationship with that person?

27. Have you ever had any dealings with any person in the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☒ NO

If YES, describe the nature of those dealings and when they occurred.

28. Do you know (on a personal, professional, or casual basis) any attorneys or judges? ☐ YES ☒ NO

If YES:

a) Please identify whom you know and what his or her job is.

b) How do you know this person (these people)?

c) What is the nature of your relationship with this person (these people)?

29. Have you ever sued or been sued? ☐ YES ☒ NO

If YES, please tell us if you were the plaintiff (the party suing) or the defendant (the party being sued), the type of case, and the outcome:

30. Have you served as a juror for a:

a) ☐ Criminal case ___ times ☐ Civil case ___ times ☐ Grand Jury ___ times ☒ Never served

b) What type(s) of criminal case(s)?

c) What was the verdict(s)? _____

d) Were you ever the foreperson? ☐ YES ☐ NO

e) What did you like or dislike about serving on a jury?

31. Have you ever filed a criminal complaint or appeared as a witness in any criminal case? ☐ YES ☒ NO

If YES, please explain (including the nature of the case, and whether you appeared as a witness for the prosecution or for the defense).

32. Have you, any family members, or friends ever worked for the Arthur Andersen accounting firm?

☐ YES ☒ NO

If YES:

a) Who worked for Arthur Andersen?

b) When and where did they work for Arthur Andersen?

c) Describe the nature of their work for Arthur Andersen.

33. Have you, any family members, or friends ever worked for or applied for work with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES:

a) Who worked for or applied for work with Enron or its subsidiaries?

b) Were you or any family members or friends hired by Enron or its subsidiaries?

c) When did you or any family members or friends hold/apply for this job?

d) When and how did this employment terminate?

34. Have you, any family members, or friends ever done business with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES, please describe the nature of that business, when it occurred, and who was involved.

35. Have you, any family members, or friends ever owned stock in Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES:

a) Approximately how many shares did you, your family member, or friend own?

b) When did you, your family member, or friend purchase the shares?

c) Did you, your family member, or friend ever sell the shares? If so, please identify when you sold, for what reason, and whether you made or lost money on the sale.

36. Do you know anyone who lost their job or lost money in an investment, an IRA, 401K, or other retirement plan as a result of the bankruptcy of Enron? ☐ YES ☒ NO

If YES, please explain.

37. Have you, any family members, or friends ever been employed by a company that has been affected by the Enron bankruptcy or the layoffs of Enron employees? ☐ YES ☒ NO

If YES, please explain. ______

38. Do you know anyone, whom you have not mentioned above, who has been negatively affected or hurt in any way by what happened at Enron? ☐ YES ☒ NO

If YES, please tell us the name of the person and how they were affected. ______

39. Do you have an opinion about the cause of the collapse of Enron? ☐ YES ☒ NO

a) If YES, what is your opinion? ______

b) On what do you base your opinion? ______

40. What do you think about the U.S. Government's investigation into the collapse of Enron?

? - do not know enough to have opinion

41. Have you heard or read about any of the Enron cases? ☒ YES ☐ NO

If YES, please tell us the name of all sources from which you have heard or read about the Enron cases (such as the [✓ Houston Chronicle], Time Magazine, [✓ Channel 13 news], O'Reilly Factor, Rush Limbaugh [✓ radio show], talking with friends, family or co-workers, [✓ internet news sources, blogs], etc.)? ______

Juror Number 038

42. Have you read any books or seen any movies about Enron? ☐ YES ☒ NO

If YES, please describe the book(s) or movie(s) and tell us what you thought of that book or movie: ___

43. Have you, your business, any family member, or your employer ever filed for bankruptcy?

☒ YES ☐ NO If YES, please tell us who filed and what happened.

mother - Ann Lankford

44. Who makes the financial decisions in your household? me

45. Do you currently, or have you ever, owned stocks (including mutual funds)? ☐ YES ☒ NO

46. Have you or your spouse lost a significant amount of money in the stock market in the past ten (10) years? ☐ YES ☒ NO If YES, please explain what happened.

47. Which of the following words would describe you? Please check (✓) all that apply:

☐ Assertive
☐ Creative
☒ Impulsive
☒ Logical
☒ Private
☐ Religious
☒ Thoughtful

☐ Analytical
☐ Decisive
☐ Innovative
☒ Loyal
☐ Problem solver
☐ Skeptical
☒ Trusting

☐ Business-minded
☐ Detailed
☐ Judgmental
☐ Opinionated
☐ Pro-business
☐ Snap-decisions
☒ Visual

☒ Cautious
☒ Dedicated
☐ Law & Order
☐ Outspoken
☐ Pro-worker
☐ Strict
☐ Other: ___

☐ Compulsive
☐ Entrepreneur
☐ Leader
☐ Practical
☐ Pro-Government
☐ Technical

48. Please list (3) people that you admire the most:

(1) brother
(2) parents
(3) co-workers

49. Please list (3) people that you admire the *least*:

(1) Bill Clinton
(2) Tom Cruise
(3) Angelina Jolie

50. What do you enjoy doing in your spare time? running, spinning, spending time w/ friends

51. **Please list your (3) favorite television shows:**
(1) Gray's Anatomy
(2) Family Guy
(3) Sat. Night Live

52. **What courtroom or law-related television shows do you watch?** n/a ??

53. **What sites on the Internet do you regularly visit?** education. based

54. **What newspapers, magazines, or trade publications do you read?**

55. **Which financial newspapers or magazines (such as the *Wall Street Journal, Business Week, Barrons, Economist, Forbes, Fortune, Money Magazine*, etc.), if any, do you read, and what financial programs, if any, do you watch on television?** n/a

56. **Which *one* source do you get *most* of your news from?** internet

57. **Please list all unions or civic, social, political, professional, and religious groups or organizations to which you or your spouse/partner belong:** n/a

58. **Have you held leadership roles in any of these organizations?** ☐ **YES** ☒ **NO**
**If YES, what was the role?**

59. **Please tell us about any volunteer work you do (now or past):** Methodist Children's Hospital, Ronald McDonald House, Chinquapin School

60. **On social issues, are you:** ☐ **Very conservative** ☐ **Conservative** ☒ **Moderate** ☐ **Liberal** ☐ **Very liberal**

61. **On economic issues are you:** ☐ **Very conservative** ☐ **Conservative** ☒ **Moderate** ☐ **Liberal** ☐ **Very liberal**

62. **Political party preference:** ☐ **Democrat** ☐ **Independent** ☒ **Republican** ☐ **Other:**

63. **Other than a traffic ticket, have you ever been arrested for, charged with, or convicted of a crime?**
☒ **YES** ☒ **NO**
**If YES:** MIP ?.
**a) Describe the nature of the charge.** –
**b) Did this charge result in a conviction?** no
**c) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?**

d) Do you feel you were treated fairly? ____________________

64. Other than a traffic ticket, have any of your family members ever been arrested for, charged with, or convicted of a crime? ☐ YES ☒ NO

**If YES:**

a) What family member? ____________________

b) Describe the nature of the charge. ____________________

c) Did this charge result in a conviction? ____________________

d) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea? ____________________

e) Do you feel your family member was treated fairly? ____________________

65. Which best describes your total yearly household income?

☐ Under $25,000 ☒ $25 - $50,000 ☐ $50 - $100,000 ☐ $100 - $250,000 ☐ More than $250,000

66. Religious Preference: none

67. Are you angry about what happened with Enron? ☒ YES ☐ NO

If YES, please explain.

I feel bad for those that worked hard and invested in the corp. - [illegible] only to have it all taken away -

68. Of all the things you have seen, heard, or read about Enron, what stands out in your mind?

↑ #67 answer

69. Do you, any family member, or friend know or have any connection with any of the defendants or their families in this case?

a) Kenneth Lay ☒ YES ■ NO
b) Jeffrey Skilling ☐ YES ☒ NO
c) Richard Causey ☐ YES ☒ NO

If you have answered YES as to any of the defendants, please explain.

ex-boyfriend's family is friends w/ Ken Lay's sister, Sharon. Spent small amount of time w/her in the past.

70. Do you have an opinion about any of the following people?

a) Kenneth Lay (former Chairman and Chief Executive Officer of Enron) ☐ YES ☒ NO

If YES, what is your opinion? ______________________________

On what do you base your opinion? ______________________________

b) Jeffrey Skilling (former Chief Operating Officer, President, Chief Executive Officer of Enron)
☐ YES ☒ NO
If YES, what is your opinion? ______________________________

On what do you base your opinion? ______________________________

c) Richard Causey (former Chief Accounting Officer of Enron) ☐ YES ☒ NO
If YES, what is your opinion? ______________________________

On what do you base your opinion? ______________________________

d) Sherron Watkins (former employee of Enron) ☐ YES ☒ NO
If YES, what is your opinion? ______________________________

On what do you base your opinion? ______________________________

71. Based on anything you have heard, read, or been told do you have any opinion about the guilt or innocence of any of the following people:

a) Richard Causey ☐ YES ☒ NO
b) Jeffrey Skilling ☐ YES ☒ NO
c) Kenneth Lay ☐ YES ☒ NO

If you have answered YES as to any of these people, please explain. ______________________________

72. The Judge in this case will instruct you that the indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

73. Notwithstanding the instructions that the judge will give you at the trial, would any opinion you may have formed regarding Enron or any of the defendants prevent you from impartially considering the evidence presented during the trial of these three defendants?

| | | | |
|---|---|---|---|
| a) Kenneth Lay | ☐ YES | ☒ NO | ☐ UNSURE |
| b) Jeffrey Skilling | ☐ YES | ☒ NO | ☐ UNSURE |
| c) Richard Causey | ☐ YES | ☒ NO | ☐ UNSURE |

If YES or UNSURE as to any of these people, please explain.

74. Is there anything else you feel is important for the court to know about you?

75. Would you like to serve on this jury? ☐ YES ☒ NO ☐ DON'T KNOW

Please explain your answer.

I teach at a private therapeutic school. The Children and families and staff cannot afford to adjust to such a major change → a sudden absence of teacher.

76. Do you have a physical or other disability that would keep you from serving as a juror?
☐ YES ☒ NO If YES, please explain. ____________________

77. This trial will begin on January 17, 2006, and may last as long as 6 months. You may rely upon the jury being in session Monday through Thursday from 8:30 am until 5:00 pm. The court will not be in session during federal holidays. A trial of this length is a hardship on virtually every juror. Would serving as a juror in this case cause such a severe hardship that it would affect your ability to be a fair and impartial juror? ☐ YES ☒ NO
If YES, please explain. ____________________

## OATH

I hereby swear or affirm that all of my answers in this questionnaire are true and correct to the best of my ability.

Juror's Signature

12/09/05
Date

Juror Number 038

# EXPLANATION SHEET

# JUROR QUESTIONNAIRE

50
(For Official Use Only)

This form helps the court select a jury. Please answer all blanks *in print and in black ink*. If the question does not apply to you, please write "NA" in it. The lawyers are entitled to information about potential jurors, but if you choose not to answer a question for private reasons, please draw a single line through it.

| | | | |
|---|---|---|---|
| Name<br>Kathy Harrison. | Age<br>54 | Birth Place<br>Gilmer, Tx | Religious Preference<br>Nazarene |

| | | | | |
|---|---|---|---|---|
| City of Residence<br>Pasadena | Years There<br>16 years | Employer (ex if retired)<br>Pasadena I.S.D. | Type of Work<br>teacher | Years<br>24 |

| | | | | | |
|---|---|---|---|---|---|
| Children's Ages & Sex | F | | | | Grown Children's Type of Work |
| | 29 | | | | Executive Secretary |

| | | |
|---|---|---|
| Marital Status<br>M | Spouse's Name<br>Garry L. Harrison | Spouse's Birth Place<br>Memphis, Tx |

| | | |
|---|---|---|
| Spouse's Employer<br>Grocer's Supply | Type of Work<br>Store Development | Years<br>17 |

| | | | |
|---|---|---|---|
| List governments that you & relatives have worked for. List law enforcement but not the military. | Who?<br>NA | Governmental Unit<br>NA | Type of Work<br>NA |

| | | | |
|---|---|---|---|
| Have you served in the military? | Yes [✓ No] | Branch & Highest Rank<br>NA | Years<br>NA |

| | | | |
|---|---|---|---|
| School Level | School and City | Subject Studied | Degree |
| High School | Paris High School - Paris, Tx | | yes |
| College | Southern Nazarene University, Okla City Okla | Education | B.A. |
| Post College | East Texas State Uni. | Education | |

Do you have any Legal, Para-Legal, or Medical Training? Yes [✓ No]
If yes, describe

| | | | |
|---|---|---|---|
| Civil Suits | Have you sued or been sued? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes No | Case Type |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |
| Criminal Actions | Have you been charged criminally, other than a traffic ticket? | Yes [✓ No] | Case Type |
| | Have you made a criminal complaint? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes No | Case Type |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |

| | |
|---|---|
| List the magazines & newspapers you read | Taste of Home, Quick Cooking |
| List the civic clubs, societies, unions, and political groups you and your spouse have joined | T.C.T.A. (teacher) |
| Do you have a physical, or other inability that would keep you from serving as a juror? If yes, please describe. | No |

# INSTRUCTIONS TO JURORS

The attached questionnaire must be answered by you. The answers will assist the judge and lawyers in selecting a jury. Answer all the questions to the best of your ability. There are no right or wrong answers. To answer correctly you must answer honestly.

We need your help so that we can select a fair and impartial jury in this case. Only the judge and lawyers will know your name. Do not assume anything from these questions. The fact they are being asked does not necessarily have anything to do with the evidence that you will hear.

The judge and lawyers know that every person has beliefs and prejudices concerning many things. You should answer with your true feelings, whatever they may be. Do not assume that any of your answers will qualify you or disqualify you from serving on this jury.

Please fully answer each question to the best of your ability. Write or print clearly. You must not ask anyone for help. Do the best you can.

If you cannot answer a question because you do not understand it, write "Do Not Understand" in the margin next to the question. If you cannot answer because you do not know, write "Do Not Know" in the margin next to the question. If you want to explain your answer do so briefly in the margin next to the question. If for any reason you do not want to answer any of the questions asked, please write the word "PRIVATE" next to the question and we will take this matter up with you privately.

We are all certain that you understand the importance of juries to our American system of justice. We are confident that you will not try to avoid your duty as a citizen to serve if it is at all possible to do so. Without your help our courts cannot operate properly under the Constitution.

An Explanation Sheet is provided for you at the end of the questionnaire to answer questions more fully. Rather than leaving out information, please turn to the end and put your answers on the explanation sheet provided.

Because your answers are part of the jury selection process and become part of the records of this court, your answers must be truthful and under penalty of perjury.

# JUROR QUESTIONNAIRE

**Juror #:** 050

1. **Full Name:** Kathy Laraye Harrison **Gender:** ☐ Male ☒ Female **Age:** 54
2. **What is your race?** White
3. **City of Residence:** Pasadena **Years There:** 16 **Birth Place:** Gilmer, Tx
4. **What is your zip code?** 77504
5. **Who is your employer and what is your job (if unemployed/retired, what and where was your last job)?** Pasadena I.S.D. - teacher
6. **For how many years have/did you worked there?** 16 years
7. **Describe your job duties or responsibilities:** 3rd grade teacher
8. **What jobs have you held in the past?** odd jobs while in college
9. **Have you ever been laid off from a job?** ☐ YES ☒ NO

   **If YES, how long ago?**
10. **Have you or your immediate family ever been affected by any type of layoff or downsizing?** ☒ YES ☐ NO

    **If YES, please explain:** Husband - job eliminated
11. **Have you ever been responsible for hiring, firing, or supervising employees?** ☐ YES ☒ NO
12. **How far did you go in school [if college or post-college, name the school(s) and any degrees received]?** Bachelor and some graduate work
13. **Current marital status:** M **If married, for how long?** 33 **How many times?** 1
14. **Spouse's Name:** Garry Harrison **Spouse's Birth Place:** Memphis, Tx
15. **Who is your spouse/partner's employer and what is this person's job (if unemployed/retired, what and where was this person's last job)?** Grocer's Supply - Store Development

16. **What jobs has this person held in the past?** Grocery jobs

17. **Please list the sex, age, and occupation for each of your children and step-children:**
F - 29 - executive secretary

18. **List all governments and government agencies (do not include law enforcement or military) that you and your relatives have worked for and tell us who held this job, what governmental unit, and the type of work:** NA

19. **Have you, any family members, or friends ever been employed by or applied for a job with any law enforcement agency?** ☐ YES ☑ NO

**If YES:**

**a) Were you, your family member, or friend hired?** NA

**b) What job did you, your family member, or friend apply for and/or have?** NA

**c) When did you, your family member, or friend apply for and/or have this job?** NA

**d) Do you, your family member, or friend still hold this job today?** ☐ YES ☐ NO

**If NO, when and how did that employment end?**

20. **Have you or has anyone close to you ever had a negative experience dealing with law enforcement officers at the local or federal level (such as the police, FBI, INS, IRS, etc)?** ☐ YES ☑ NO

**If YES, please describe:**

**If YES, what is your opinion toward that agency now?**

21. **Have you or has anyone close to you ever had a negative experience dealing with the United States government or any governmental agency?** ☐ YES ☑ NO

**If YES, please describe:**

**If YES, what is your opinion toward that institution or agency now?**

22. **Have you or any family members ever owned your (their) own business?** ☑ YES ☐ NO

Juror Number 059

If YES, please tell us what type of business and is the business still open? Tour Buses - Still in operation

23. Have you ever worked for a large corporation? ☐ YES ☑ NO

If YES:

a) What corporation(s) did you work for and when?

b) Are (were) you satisfied with your work at the corporation? ☐ YES ☐ NO Did not work at one

c) Have you ever had a bad experience with a large corporation? ☐ YES ☑ NO

If YES, please explain.

24. What are your opinions about the compensation that executives of large corporations receive? Fine when company productivity increases or the company makes a profit. However the employes should also get some compensation from company profit.

25. Have you had any education, training or experience in: accounting, bookkeeping, business, business management, finance, corporate finance, investment banking, law (criminal and/or civil), ethics, law enforcement, marketing, or stock trading? ☐ YES ☑ NO

If YES, please describe your education training or experience:

26. Do you know anyone who works for the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☑ NO

If YES, whom do you know and what is the nature of your relationship with that person?

27. Have you ever had any dealings with any person in the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☑ NO

If YES, describe the nature of those dealings and when they occurred.

28. Do you know (on a personal, professional, or casual basis) any attorneys or judges? ☐ YES ☑ NO

If YES:

BEST AVAILABLE COPY

Juror Number 070

a) Please identify whom you know and what his or her job is. N/A

b) How do you know this person (these people)? N/A

c) What is the nature of your relationship with this person (these people)? N/A

29. Have you ever sued or been sued? ☐ YES ☑ NO

If YES, please tell us if you were the plaintiff (the party suing) or the defendant (the party being sued), the type of case, and the outcome:

30. Have you served as a juror for a:

a) ☐ Criminal case ___ times ☐ Civil case ___ times ☐ Grand Jury ___ times ☑ Never served

b) What type(s) of criminal case(s)? N/A

c) What was the verdict(s)? ____

d) Were you ever the foreperson? ☐ YES ☐ NO

e) What did you like or dislike about serving on a jury? N/A

31. Have you ever filed a criminal complaint or appeared as a witness in any criminal case? ☐ YES ☑ NO

If YES, please explain (including the nature of the case, and whether you appeared as a witness for the prosecution or for the defense).

32. Have you, any family members, or friends ever worked for the Arthur Andersen accounting firm?

☐ YES ☑ NO

If YES:

a) Who worked for Arthur Andersen?

b) When and where did they work for Arthur Andersen?

c) Describe the nature of their work for Arthur Andersen.

33. Have you, any family members, or friends ever worked for or applied for work with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES:

Juror Number [illegible]

a) Who worked for or applied for work with Enron or its subsidiaries? No

b) Were you or any family members or friends hired by Enron or its subsidiaries? No

c) When did you or any family members or friends hold/apply for this job? No

d) When and how did this employment terminate? N/A

34. Have you, any family members, or friends ever done business with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES, please describe the nature of that business, when it occurred, and who was involved.

35. Have you, any family members, or friends ever owned stock in Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES:

a) Approximately how many shares did you, your family member, or friend own? none

b) When did you, your family member, or friend purchase the shares? none

c) Did you, your family member, or friend ever sell the shares? If so, please identify when you sold, for what reason, and whether you made or lost money on the sale. none

36. Do you know anyone who lost their job or lost money in an investment, an IRA, 401K, or other retirement plan as a result of the bankruptcy of Enron? ☐ YES ☑ NO

If YES, please explain.

37. Have you, any family members, or friends ever been employed by a company that has been affected by the Enron bankruptcy or the layoffs of Enron employees? ☐ YES ☑ NO

If YES, please explain.

38. Do you know anyone, whom you have not mentioned above, who has been negatively affected or hurt in any way by what happened at Enron? ☐ YES ☒ NO

If YES, please tell us the name of the person and how they were affected.

39. Do you have an opinion about the cause of the collapse of Enron? ☒ YES ☐ NO

a) If YES, what is your opinion? I feel sorry for the employes who lost jobs and retirement.

b) On what do you base your opinion? Media

40. What do you think about the U.S. Government's investigation into the collapse of Enron?

The government should determine if there was purposeful wrong-doing.

41. Have you heard or read about any of the Enron cases? ☒ YES ☐ NO

If YES, please tell us the name of all sources from which you have heard or read about the Enron cases (such as the Houston Chronicle, Time Magazine, Channel 13 news, O'Reilly Factor, Rush Limbaugh radio show, talking with friends, family or co-workers, internet news sources, blogs, etc.)?

Chronicle, Channel 13 + 11 news

42. Have you read any books or seen any movies about Enron? ☐ YES ☑ NO

If YES, please describe the book(s) or movie(s) and tell us what you thought of that book or movie: __

43. Have you, your business, any family member, or your employer ever filed for bankruptcy?

☐ YES ☑ NO If YES, please tell us who filed and what happened.

44. Who makes the financial decisions in your household? Both, my husband and I

45. Do you currently, or have you ever, owned stocks (including mutual funds)? ☑ YES ☐ NO

46. Have you or your spouse lost a significant amount of money in the stock market in the past ten (10) years? ☐ YES ☑ NO If YES, please explain what happened.

47. Which of the following words would describe you? Please check (✓) all that apply:

☐ Assertive ☐ Analytical ☐ Business-minded ☑ Cautious ☐ Compulsive
☐ Creative ☐ Decisive ☐ Detailed ☑ Dedicated ☐ Entrepreneur
☐ Impulsive ☐ Innovative ☐ Judgmental ☐ Law & Order ☐ Leader
☑ Logical ☑ Loyal ☐ Opinionated ☐ Outspoken ☑ Practical
☑ Private ☐ Problem solver ☐ Pro-business ☐ Pro-worker ☐ Pro-Government
☑ Religious ☑ Skeptical ☐ Snap-decisions ☐ Strict ☐ Technical
☑ Thoughtful ☐ Trusting ☐ Visual ☐ Other: ________

48. Please list (3) people that you admire the *most*:

(1) Barbara Bush
(2) My Parents
(3) Rhonda Parmer (my Principal)

49. Please list (3) people that you admire the *least*:

(1) ________
(2) ________
(3) ________

50. What do you enjoy doing in your spare time? Reading, Cooking, Keeping grandchildren

51. **Please list your (3) favorite television shows:**

(1) Oprah

(2)

(3)

52. **What courtroom or law-related television shows do you watch?**

Judy Judy

53. **What sites on the Internet do you regularly visit?**

54. **What newspapers, magazines, or trade publications do you read?**

Chronicle

Taste of Home

55. **Which financial newspapers or magazines (such as the *Wall Street Journal, Business Week, Barrons, Economist, Forbes, Fortune, Money Magazine*, etc.), if any, do you read, and what financial programs, if any, do you watch on television?**

56. **Which *one* source do you get *most* of your news from?**

57. **Please list all unions or civic, social, political, professional, and religious groups or organizations to which you or your spouse/partner belong:** TCTA (teacher org.)

Church of the Nazarene

58. **Have you held leadership roles in any of these organizations?** ☑ YES ☐ NO

**If YES, what was the role?** teacher and Women's Ministries

59. **Please tell us about any volunteer work you do (now or past):** Church

60. **On social issues, are you:** ☐ Very conservative ☑ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

61. **On economic issues are you:** ☐ Very conservative ☑ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

62. **Political party preference:** ☐ Democrat ☐ Independent ☑ Republican ☐ Other: ____________

63. **Other than a traffic ticket, have you ever been arrested for, charged with, or convicted of a crime?**

☐ YES ☑ NO

**If YES:**

a) **Describe the nature of the charge.**

b) **Did this charge result in a conviction?**

c) **If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?**

d) Do you feel you were treated fairly?

**64.** Other than a traffic ticket, have any of your family members ever been arrested for, charged with, or convicted of a crime? ☑ YES ☐ NO

If YES:

a) What family member? Daughter

b) Describe the nature of the charge. Hot check

c) Did this charge result in a conviction? No

d) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?

e) Do you feel your family member was treated fairly? Yes

**65.** Which best describes your total yearly household income?

☐ Under $25,000 ☐ $25 - $50,000 ☑ $50 - $100,000 ☐ $100 - $250,000 ☐ More than $250,000

**66.** Religious Preference: Nazarene

**67.** Are you angry about what happened with Enron? ☑ YES ☐ NO

If YES, please explain. Perhaps angry is not the word to describe my feeling, but concern for those affected.

**68.** Of all the things you have seen, heard, or read about Enron, what stands out in your mind?

So many people losing their jobs

**69.** Do you, any family member, or friend know or have any connection with any of the defendants or their families in this case?

a) Kenneth Lay ☐ YES ☑ NO

b) Jeffrey Skilling ☐ YES ☑ NO

c) Richard Causey ☐ YES ☑ NO

If you have answered YES as to any of the defendants, please explain.

**70.** Do you have an opinion about any of the following people?

a) Kenneth Lay (former Chairman and Chief Executive Officer of Enron) ☐ YES ☑ NO

**If YES, what is your opinion?** ____________________

**On what do you base your opinion?** ____________________

b) **Jeffrey Skilling (former Chief Operating Officer, President, Chief Executive Officer of Enron)**
**☐ YES ☑ NO**

**If YES, what is your opinion?** ____________________

**On what do you base your opinion?** ____________________

c) **Richard Causey (former Chief Accounting Officer of Enron) ☐ YES ☑ NO**

**If YES, what is your opinion?** ____________________

**On what do you base your opinion?** ____________________

d) **Sherron Watkins (former employee of Enron) ☐ YES ☑ NO**

**If YES, what is your opinion?** ____________________

**On what do you base your opinion?** ____________________

71. **Based on anything you have heard, read, or been told do you have any opinion about the guilt or innocence of any of the following people:**

| | |
|---|---|
| a) **Richard Causey** | **☐ YES ☑ NO** |
| b) **Jeffrey Skilling** | **☐ YES ☑ NO** |
| c) **Kenneth Lay** | **☐ YES ☑ NO** |

**If you have answered YES as to any of these people, please explain.** ____________________

72. The Judge in this case will instruct you that the indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

73. Notwithstanding the instructions that the judge will give you at the trial, would any opinion you may have formed regarding Enron or any of the defendants prevent you from impartially considering the evidence presented during the trial of these three defendants?

a) Kenneth Lay ☐ YES ☑ NO ☐ UNSURE
b) Jeffrey Skilling ☐ YES ☑ NO ☐ UNSURE
c) Richard Causey ☐ YES ☑ NO ☐ UNSURE

If YES or UNSURE as to any of these people, please explain.

74. Is there anything else you feel is important for the court to know about you? I am concerned about being away from my students if I were picked for a jury.

75. Would you like to serve on this jury? ☐ YES ☐ NO ☑ DON'T KNOW

Please explain your answer.

76. Do you have a physical or other disability that would keep you from serving as a juror?
☐ YES ☑ NO If YES, please explain. ______________________________

77. This trial will begin on January 17, 2006, and may last as long as 6 months. You may rely upon the jury being in session Monday through Thursday from 8:30 am until 5:00 pm. The court will not be in session during federal holidays. A trial of this length is a hardship on virtually every juror. Would serving as a juror in this case cause such a severe hardship that it would affect your ability to be a fair and impartial juror? ☐ YES ☑ NO
If YES, please explain. ______________________________

## OATH

I hereby swear or affirm that all of my answers in this questionnaire are true and correct to the best of my ability.

Kathy [illegible] 11-1-05
Juror's Signature Date

Juror Number 050

# EXPLANATION SHEET

JUROR QUESTIONNAIRE

63
(For Official Use Only)

This form helps the court select a jury. Please answer all blanks *in print and in black ink*. If the question does not apply to you, please write "NA" in it. The lawyers are entitled to information about potential jurors, but if you choose not to answer a question for private reasons, please draw a single line through it.

| | | | |
|---|---|---|---|
| Name<br>Jill S. Ford | Age<br>24 | Birth Place<br>Houston TX | Religious Preference<br>Christian |

| | | | | |
|---|---|---|---|---|
| City of Residence<br>Houston | Years There<br>20 | Employer (ex if retired)<br>HFI Management | Type of Work<br>Marketing | Years<br>1 |

| | | | | | |
|---|---|---|---|---|---|
| Children's Ages & Sex | | | | | Grown Children's Type of Work |
| | | | | | |

| | | |
|---|---|---|
| Marital Status<br>Single | Spouse's Name | Spouse's Birth Place |
| Spouse's Employer | Type of Work | Years |

| | | | |
|---|---|---|---|
| List governments that you & relatives have worked for. List law enforcement but not the military. | Who? | Governmental Unit | Type of Work |
| Have you served in the military? | Yes [✓ No] | Branch & Highest Rank | Years |

| | | | |
|---|---|---|---|
| School Level | School and City | Subject Studied | Degree |
| High School | Second Baptist School | general | diploma |
| College | University of Texas | Advertising | B.S. |
| Post College | | | |

Do you have any Legal, Para-Legal, or Medical Training? Yes [✓ No]
If yes, describe

| | | | |
|---|---|---|---|
| Civil Suits | Have you sued or been sued? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes No | Case Type |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |
| Criminal Actions | Have you been charged criminally, other than a traffic ticket? | [✓ Yes] No | Case Type Minor in possession of alcohol |
| | Have you made a criminal complaint? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes No | Case Type |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |

| | |
|---|---|
| List the magazines & newspapers you read | InStyle, Us Weekly, People, Allure, Glamour, Cosmo |
| List the civic clubs, societies, unions, and political groups you and your spouse have joined | American Cancer Society Volunteer |
| Do you have a physical, or other inability that would keep you from serving as a juror? If yes, please describe | NO |

Juror Number 063

# INSTRUCTIONS TO JURORS

The attached questionnaire must be answered by you. The answers will assist the judge and lawyers in selecting a jury. Answer all the questions to the best of your ability. There are no right or wrong answers. To answer correctly you must answer honestly.

. We need your help so that we can select a fair and impartial jury in this case. Only the judge and lawyers will know your name. Do not assume anything from these questions. The fact they are being asked does not necessarily have anything to do with the evidence that you will hear.

The judge and lawyers know that every person has beliefs and prejudices concerning many things. You should answer with your true feelings, whatever they may be. Do not assume that any of your answers will qualify you or disqualify you from serving on this jury.

Please fully answer each question to the best of your ability. Write or print clearly. You must not ask anyone for help. Do the best you can.

If you cannot answer a question because you do not understand it, write "Do Not Understand" in the margin next to the question. If you cannot answer because you do not know, write "Do Not Know" in the margin next to the question. If you want to explain your answer do so briefly in the margin next to the question. If for any reason you do not want to answer any of the questions asked, please write the word "PRIVATE" next to the question and we will take this matter up with you privately.

We are all certain that you understand the importance of juries to our American system of justice. We are confident that you will not try to avoid your duty as a citizen to serve if it is at all possible to do so. Without your help our courts cannot operate properly under the Constitution.

An Explanation Sheet is provided for you at the end of the questionnaire to answer questions more fully. Rather than leaving out information, please turn to the end and put your answers on the explanation sheet provided.

Because your answers are part of the jury selection process and become part of the records of this court, your answers must be truthful and under penalty of perjury.

# JUROR QUESTIONNAIRE Juror #: 063

1. Full Name: Jill Sarah Ford Gender: ☐ Male ☑ Female Age: 24
2. What is your race? White
3. City of Residence: Houston Years There: 20 Birth Place: Houston
4. What is your zip code? 77098
5. Who is your employer and what is your job (if unemployed/retired, what and where was your last job)? HFI Management - Apartment Marketing
6. For how many years have/did you worked there? 1
7. Describe your job duties or responsibilities: assume all marketing for 5 affordable tax credit properties, leasing, occupancy reporting to owners.
8. What jobs have you held in the past?
9. Have you ever been laid off from a job? ☐ YES ☑ NO

   If YES, how long ago?
10. Have you or your immediate family ever been affected by any type of layoff or downsizing? ☐ YES ☑ NO

    If YES, please explain:
11. Have you ever been responsible for hiring, firing, or supervising employees? ☑ YES ☐ NO
12. How far did you go in school [If college or post-college, name the school(s) and any degrees received]? I have a bachelor's of Science in advertising from the University of Texas.
13. Current marital status: Single If married, for how long? How many times?
14. Spouse's Name: Spouse's Birth Place:
15. Who is your spouse/partner's employer and what is this person's job (if unemployed/retired, what and where was this person's last job)?

16. What jobs has this person held in the past?

17. Please list the sex, age, and occupation for each of your children and step-children:

18. List all governments and government agencies (do not include law enforcement or military) that you and your relatives have worked for and tell us who held this job, what governmental unit, and the type of work:

19. Have you, any family members, or friends ever been employed by or applied for a job with any law enforcement agency? ☐ YES ☒ NO

If YES:

a) Were you, your family member, or friend hired?

b) What job did you, your family member, or friend apply for and/or have?

c) When did you, your family member, or friend apply for and/or have this job?

d) Do you, your family member, or friend still hold this job today? ☐ YES ☐ NO

If NO, when and how did that employment end?

20. Have you or has anyone close to you ever had a negative experience dealing with law enforcement officers at the local or federal level (such as the police, FBI, INS, IRS, etc)? ☐ YES ☒ NO

If YES, please describe:

If YES, what is your opinion toward that agency now?

21. Have you or has anyone close to you ever had a negative experience dealing with the United States government or any governmental agency? ☐ YES ☒ NO

If YES, please describe:

If YES, what is your opinion toward that institution or agency now?

22. Have you or any family members ever owned your (their) own business? ☒ YES ☐ NO

If YES, please tell us what type of business and is the business still open?

23. Have you ever worked for a large corporation? ☐ YES ☒ NO

If YES:

a) What corporation(s) did you work for and when?

b) Are (were) you satisfied with your work at the corporation? ☐ YES ☐ NO

c) Have you ever had a bad experience with a large corporation? ☐ YES ☐ NO

If YES, please explain.

24. What are your opinions about the compensation that executives of large corporations receive?
If they work hard and have the knowledge it takes they deserve their compensation. They assume responsibility for the whole company.

25. Have you had any education, training or experience in: accounting, bookkeeping, business, business management, finance, corporate finance, investment banking, law (criminal and/or civil), ethics, law enforcement, marketing, or stock trading? ☑ YES ☐ NO

If YES, please describe your education training or experience: My job is Marketing, advertising apartment complexes.

26. Do you know anyone who works for the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☑ NO

If YES, whom do you know and what is the nature of your relationship with that person?

27. Have you ever had any dealings with any person in the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☑ NO

If YES, describe the nature of those dealings and when they occurred.

28. Do you know (on a personal, professional, or casual basis) any attorneys or judges? ☐ YES ☑ NO

If YES:

a) Please identify whom you know and what his or her job is. ______

b) How do you know this person (these people)? ______

c) What is the nature of your relationship with this person (these people)? ______

29. **Have you ever sued or been sued?** ☐ YES ☒ NO

**If YES, please tell us if you were the plaintiff (the party suing) or the defendant (the party being sued), the type of case, and the outcome:** ______

30. **Have you served as a juror for a:**

a) ☐ Criminal case ___ times ☐ Civil case ___ times ☐ Grand Jury ___ times ☒ Never served

b) What type(s) of criminal case(s)? ______

c) What was the verdict(s)? _____

d) Were you ever the foreperson? ☐ YES ☐ NO

e) What did you like or dislike about serving on a jury? ______

31. **Have you ever filed a criminal complaint or appeared as a witness in any criminal case?** ☐ YES ☒ NO

**If YES, please explain (including the nature of the case, and whether you appeared as a witness for the prosecution or for the defense).** ______

32. **Have you, any family members, or friends ever worked for the Arthur Andersen accounting firm?**

☐ YES ☒ NO

If YES:

a) Who worked for Arthur Andersen? ______

b) When and where did they work for Arthur Andersen? ______

c) Describe the nature of their work for Arthur Andersen. ______

33. **Have you, any family members, or friends ever worked for or applied for work with Enron Corporation or any Enron subsidiaries or partnerships?** ☐ YES ☒ NO

If YES:

**a) Who worked for or applied for work with Enron or its subsidiaries?**

**b) Were you or any family members or friends hired by Enron or its subsidiaries?**

**c) When did you or any family members or friends hold/apply for this job?**

**d) When and how did this employment terminate?**

**34. Have you, any family members, or friends ever done business with Enron Corporation or any Enron subsidiaries or partnerships?** ☐ **YES** ☒ **NO**

**If YES, please describe the nature of that business, when it occurred, and who was involved.**

**35. Have you, any family members, or friends ever owned stock in Enron Corporation or any Enron subsidiaries or partnerships?** ☐ **YES** ☒ **NO**

**If YES:**

**a) Approximately how many shares did you, your family member, or friend own?**

**b) When did you, your family member, or friend purchase the shares?**

**c) Did you, your family member, or friend ever sell the shares? If so, please identify when you sold, for what reason, and whether you made or lost money on the sale.**

**36. Do you know anyone who lost their job or lost money in an investment, an IRA, 401K, or other retirement plan as a result of the bankruptcy of Enron?** ☒ **YES** ☐ **NO**

**If YES, please explain.** I once met a guy who worked for Enron
I cannot remember his name.

**37. Have you, any family members, or friends ever been employed by a company that has been affected by the Enron bankruptcy or the layoffs of Enron employees?** ☐ **YES** ☒ **NO**

If YES, please explain.

38. Do you know anyone, whom you have not mentioned above, who has been negatively affected or hurt in any way by what happened at Enron? ☐ YES ☒ NO

If YES, please tell us the name of the person and how they were affected.

39. Do you have an opinion about the cause of the collapse of Enron? ☐ YES ☒ NO

a) If YES, what is your opinion?

b) On what do you base your opinion?

40. What do you think about the U.S. Government's investigation into the collapse of Enron?

I do not know enough about the situation

41. Have you heard or read about any of the Enron cases? ☐ YES ☒ NO

If YES, please tell us the name of all sources from which you have heard or read about the Enron cases (such as the Houston Chronicle, Time Magazine, Channel 13 news, O'Reilly Factor, Rush Limbaugh radio show, talking with friends, family or co-workers, internet news sources, blogs, etc.)?

42. Have you read any books or seen any movies about Enron? ☐ YES ☒ NO

If YES, please describe the book(s) or movie(s) and tell us what you thought of that book or movie:

43. Have you, your business, any family member, or your employer ever filed for bankruptcy?

☐ YES ☒ NO If YES, please tell us who filed and what happened.

44. Who makes the financial decisions in your household? I do

45. Do you currently, or have you ever, owned stocks (including mutual funds)? ☒ YES ☐ NO

46. Have you or your spouse lost a significant amount of money in the stock market in the past ten (10) years? ☐ YES ☒ NO If YES, please explain what happened.

47. Which of the following words would describe you? Please check (✓) all that apply:

☒ Assertive
☒ Creative
☒ Impulsive
☐ Logical
☐ Private
☒ Religious
☐ Thoughtful
☐ Analytical
☒ Decisive
☐ Innovative
☐ Loyal
☐ Problem solver
☐ Skeptical
☐ Trusting
☐ Business-minded
☐ Detailed
☐ Judgmental
☒ Opinionated
☒ Pro-business
☐ Snap-decisions
☐ Visual
☐ Cautious
☐ Dedicated
☐ Law & Order
☒ Outspoken
☐ Pro-worker
☐ Strict
☐ Other:
☐ Compulsive
☐ Entrepreneur
☐ Leader
☐ Practical
☐ Pro-Government
☐ Technical

48. Please list (3) people that you admire the *most*:

(1) My Dad, Steve Ford
(2) Oprah Winfrey
(3) Condoleeza Rice

49. Please list (3) people that you admire the *least*:

(1) Paris Hilton
(2) John Kerry
(3)

50. What do you enjoy doing in your spare time? Travel, cooking, shopping, dining out with family and friends, exercise, television/movies

51. Please list your (3) favorite television shows:
(1) Friends
(2) CSI
(3) Law and Order

52. What courtroom or law-related television shows do you watch? Law and Order: SVU, Law and Order

53. What sites on the Internet do you regularly visit? Foxnews.com, thesuperficial.com, MSNBC.com, ebay.com

54. What newspapers, magazines, or trade publications do you read? People, Allure, Glamour, Cosmo, Us Weekly, In Touch

55. Which financial newspapers or magazines (such as the ***Wall Street Journal***, ***Business Week***, ***Barrons***, ***Economist***, ***Forbes***, ***Fortune***, ***Money Magazine***, etc.), if any, do you read, and what financial programs, if any, do you watch on television? NONE

56. Which *one* source do you get *most* of your news from? Foxnews.com or MSNBC.com

57. Please list all unions or civic, social, political, professional, and religious groups or organizations to which you or your spouse/partner belong: Volunteer for American Cancer Society. Member of Second Baptist Church

58. Have you held leadership roles in any of these organizations? ☐ YES ☒ NO
If YES, what was the role?

59. Please tell us about any volunteer work you do (now or past): American Cancer Society Susan G. Komen volunteer in college.

60. On social issues, are you: ☐ Very conservative ☒ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

61. On economic issues are you: ☐ Very conservative ☐ Conservative ☒ Moderate ☐ Liberal ☐ Very liberal

62. Political party preference: ☐ Democrat ☐ Independent ☒ Republican ☐ Other:

63. Other than a traffic ticket, have you ever been arrested for, charged with, or convicted of a crime?
☒ YES ☐ NO
If YES:
a) Describe the nature of the charge. I got a "minor in possession of alcohol" but was not convicted
b) Did this charge result in a conviction? NO
c) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?

d) Do you feel you were treated fairly?

64. Other than a traffic ticket, have any of your family members ever been arrested for, charged with, or convicted of a crime? ☐ YES ☒ NO

If YES:

a) What family member?

b) Describe the nature of the charge.

c) Did this charge result in a conviction?

d) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?

e) Do you feel your family member was treated fairly?

65. Which best describes your total yearly household income?

☐ Under $25,000 ☒ $25 - $50,000 ☐ $50 - $100,000 ☐ $100 - $250,000 ☐ More than $250,000

66. Religious Preference: Christian

67. Are you angry about what happened with Enron? ☐ YES ☒ NO

If YES, please explain.

68. Of all the things you have seen, heard, or read about Enron, what stands out in your mind? Something about whistleblowers and Arthur Andersen lying about Enron's accounting

69. Do you, any family member, or friend know or have any connection with any of the defendants or their families in this case?

a) Kenneth Lay ☑ YES ☐ NO

b) Jeffrey Skilling ☐ YES ☑ NO

c) Richard Causey ☐ YES ☑ NO

If you have answered YES as to any of the defendants, please explain. Ken Lay is a member of our country club.

70. Do you have an opinion about any of the following people?

a) Kenneth Lay (former Chairman and Chief Executive Officer of Enron) ☐ YES ☒ NO

If YES, what is your opinion?

On what do you base your opinion?

b) Jeffrey Skilling (former Chief Operating Officer, President, Chief Executive Officer of Enron)

☐ YES ☒ NO

If YES, what is your opinion?

On what do you base your opinion?

c) Richard Causey (former Chief Accounting Officer of Enron) ☐ YES ☒ NO

If YES, what is your opinion?

On what do you base your opinion?

d) Sherron Watkins (former employee of Enron) ☐ YES ☒ NO

If YES, what is your opinion?

On what do you base your opinion?

71. Based on anything you have heard, read, or been told do you have any opinion about the guilt or innocence of any of the following people:

a) Richard Causey ☑ YES ☐ NO
b) Jeffrey Skilling ☑ YES ☐ NO
c) Kenneth Lay ☑ YES ☐ NO

If you have answered YES as to any of these people, please explain. I think they probably knew they were breaking the law.

72. The Judge in this case will instruct you that the indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

73. Notwithstanding the instructions that the judge will give you at the trial, would any opinion you may have formed regarding Enron or any of the defendants prevent you from impartially considering the evidence presented during the trial of these three defendants?

a) Kenneth Lay ☐ YES ☒ NO ☐ UNSURE
b) Jeffrey Skilling ☐ YES ☒ NO ☐ UNSURE
c) Richard Causey ☐ YES ☒ NO ☐ UNSURE

If YES or UNSURE as to any of these people, please explain.

74. Is there anything else you feel is important for the court to know about you?

75. Would you like to serve on this jury? ☐ YES ☒ NO ☐ DON'T KNOW

Please explain your answer. I work for my family's company, it would be very detrimental for me to miss large amounts of work. I also travel to Dallas to see my fiance almost every weekend.

**76.** **Do you have a physical or other disability that would keep you from serving as a juror?**

**☐ YES ☒ NO If YES, please explain.**

**77.** **This trial will begin on January 17, 2006, and may last as long as 6 months. You may rely upon the jury being in session Monday through Thursday from 8:30 am until 5:00 pm. The court will not be in session during federal holidays. A trial of this length is a hardship on virtually every juror. Would serving as a juror in this case cause such a severe hardship that it would affect your ability to be a fair and impartial juror? ☒ YES ☐ NO**

**If YES, please explain.** I think I would be very eager for the trial to end. I would have a difficult time focusing on the details of the trial knowing my work is not being completed.

## ***OATH***

**I hereby swear or affirm that all of my answers in this questionnaire are true and correct to the best of my ability.**

**Juror's Signature**

11/1/05
**Date**

Juror Number 063

# EXPLANATION SHEET

JUROR QUESTIONNAIRE

64
(For Official Use Only)

This form helps the court select a jury. Please answer all blanks *in print and in black ink*. If the question does not apply to you, please write "NA" in it. The lawyers are entitled to information about potential jurors, but if you choose not to answer a question for private reasons, please draw a single line through it.

| | | | |
|---|---|---|---|
| Name<br>DANA LYNN FERNANDEZ | Age<br>42 | Birth Place<br>2-24-63 | Religious Preference<br>Catholic |

| | | | | |
|---|---|---|---|---|
| City of Residence<br>Houston | Years There<br>42yrs | Employer (ex if retired)<br>Harris County District Clerk | Type of Work<br>Court Clerk | Years<br>20yrs. 9 mon |

| | | |
|---|---|---|
| Children's Ages & Sex 24yrs Female | | Grown Children's Type of Work<br>Model |

| | | |
|---|---|---|
| Marital Status<br>Single | Spouse's Name<br>NA | Spouse's Birth Place<br>NA |

| | | |
|---|---|---|
| Spouse's Employer<br>NA | Type of Work<br>NA | Years<br>NA |

| | | | |
|---|---|---|---|
| List governments that you & relatives have worked for. List law enforcement but not the military. | Who?<br>Self<br>Uncle | Governmental Unit<br>Harris County District Clerk's Office<br>Constable Pct. 6-Harris County | Type of Work<br>Criminal Court Clerk<br>Sgt. Police Officer |
| Have you served in the military? | Yes [✓ No] | Branch & Highest Rank<br>NA | Years<br>NA |

| School Level | School and City | Subject Studied | Degree |
|---|---|---|---|
| High School | Scarbrough - Houston | | |
| College | HCC - Houston | Computer Science | NO |
| Post College | | | |

Do you have any Legal, Para-Legal, or Medical Training? Yes [✓ No]
If yes, describe

| | | | |
|---|---|---|---|
| Civil Suits | Have you sued or been sued? | Yes [✓ No] | Case Type NA |
| | Have you served on a jury?<br>Verdict reached? | [✓ Yes] No<br>Yes [✓ No] | Case Type DO NOT remember |
| | Have you been a witness in court? | Yes [✓ No] | Case Type NA |
| Criminal Actions | Have you been charged criminally, other than a traffic ticket? | Yes [✓ No] | Case Type NA |
| | Have you made a criminal complaint? | [✓ Yes] No | Case Type Assault |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes [✓ No] | Case Type NA |
| | Have you been a witness in court? | [✓ Yes] No | Case Type Different types of criminal cases |

| | |
|---|---|
| List the magazines & newspapers you read. | Houston Chronicle |
| List the civic clubs, societies, unions, and political groups you and your spouse have joined | NA |
| Do you have a physical, or other inability that would keep you from serving as a juror?<br>If yes, please describe. | NO |

# INSTRUCTIONS TO JURORS

The attached questionnaire must be answered by you. The answers will assist the judge and lawyers in selecting a jury. Answer all the questions to the best of your ability. There are no right or wrong answers. To answer correctly you must answer honestly.

We need your help so that we can select a fair and impartial jury in this case. Only the judge and lawyers will know your name. Do not assume anything from these questions. The fact they are being asked does not necessarily have anything to do with the evidence that you will hear.

The judge and lawyers know that every person has beliefs and prejudices concerning many things. You should answer with your true feelings, whatever they may be. Do not assume that any of your answers will qualify you or disqualify you from serving on this jury.

Please fully answer each question to the best of your ability. Write or print clearly. You must not ask anyone for help. Do the best you can.

If you cannot answer a question because you do not understand it, write "Do Not Understand" in the margin next to the question. If you cannot answer because you do not know, write "Do Not Know" in the margin next to the question. If you want to explain your answer do so briefly in the margin next to the question. If for any reason you do not want to answer any of the questions asked, please write the word "PRIVATE" next to the question and we will take this matter up with you privately.

We are all certain that you understand the importance of juries to our American system of justice. We are confident that you will not try to avoid your duty as a citizen to serve if it is at all possible to do so. Without your help our courts cannot operate properly under the Constitution.

An Explanation Sheet is provided for you at the end of the questionnaire to answer questions more fully. Rather than leaving out information, please turn to the end and put your answers on the explanation sheet provided.

Because your answers are part of the jury selection process and become part of the records of this court, your answers must be truthful and under penalty of perjury.

# JUROR QUESTIONNAIRE

**Juror #:** 064

1. **Full Name:** DANA LYNN FERNANDEZ **Gender:** ☐ Male ☑ Female **Age:** 42yrs.
2. **What is your race?** MEXICAN-AMERICAN
3. **City of Residence:** Houston **Years There:** 42yrs **Birth Place:** Houston.
4. **What is your zip code?** 77009.
5. **Who is your employer and what is your job (if unemployed/retired, what and where was your last job)?** HARRIS County District CLERK'S Office - Court CLERK (CRIMINAL)
6. **For how many years have/did you worked there?** 20yRS 9months
7. **Describe your job duties or responsibilities:** issue WARRANTS, Subpoenas, write up judgements enter dockets, enter judgments, communication with judges - law enforcement - Attorneys and the public.
8. **What jobs have you held in the past?** Armao & Oshman's
9. **Have you ever been laid off from a job?** ☐ YES ☑ NO
   **If YES, how long ago?** NA
10. **Have you or your immediate family ever been affected by any type of layoff or downsizing?** ☐ YES ☑ NO
    **If YES, please explain:** NA
11. **Have you ever been responsible for hiring, firing, or supervising employees?** ☑ YES ☐ NO
12. **How far did you go in school [if college or post-college, name the school(s) and any degrees received]?** High School - Scarborough
    Some college - HCC.
13. **Current marital status:** Single **If married, for how long?** NA **How many times?** NA
14. **Spouse's Name:** NA **Spouse's Birth Place:** NA
15. **Who is your spouse/partner's employer and what is this person's job (if unemployed/retired, what and where was this person's last job)?** NA

16. What jobs has this person held in the past? NA

17. Please list the sex, age, and occupation for each of your children and step-children:
FEMALE - 24yrs. - Model

18. List all governments and government agencies (do not include law enforcement or military) that you and your relatives have worked for and tell us who held this job, what governmental unit, and the type of work: SElf - HARRis County District Clerk's Office - Criminal court clerk

19. Have you, any family members, or friends ever been employed by or applied for a job with any law enforcement agency? ☑ YES ☐ NO

If YES:

a) Were you, your family member, or friend hired? YES

b) What job did you, your family member, or friend apply for and/or have?
Houston Police Dept., & constables & sheriff's Dept.

c) When did you, your family member, or friend apply for and/or have this job?
NOT SURE

d) Do you, your family member, or friend still hold this job today? ☑ YES ☐ NO

If NO, when and how did that employment end?

20. Have you or has anyone close to you ever had a negative experience dealing with law enforcement officers at the local or federal level (such as the police, FBI, INS, IRS, etc)? ☐ YES ☑ NO

If YES, please describe: NA

If YES, what is your opinion toward that agency now? NA

21. Have you or has anyone close to you ever had a negative experience dealing with the United States government or any governmental agency? ☐ YES ☑ NO

If YES, please describe: NA

If YES, what is your opinion toward that institution or agency now?
NA

22. Have you or any family members ever owned your (their) own business? ☐ YES ☑ NO

If YES, please tell us what type of business and is the business still open?

NA

23. Have you ever worked for a large corporation? ☑ YES ☐ NO

If YES:

a) What corporation(s) did you work for and when? Armco - 1981-1982

b) Are (were) you satisfied with your work at the corporation? ☑ YES ☐ NO

c) Have you ever had a bad experience with a large corporation? ☐ YES ☑ NO

If YES, please explain.

24. What are your opinions about the compensation that executives of large corporations receive?

Sometimes I think they receive a little too much.

25. Have you had any education, training or experience in: accounting, bookkeeping, business, business management, finance, corporate finance, investment banking, law (criminal and/or civil), ethics, law enforcement, marketing, or stock trading? ☑ YES ☐ NO

If YES, please describe your education training or experience: I've worked with a Criminal judge for 20yrs. - issue warrants, Subpoenas, entering judgements, communications with judges - law enforcement and Attorneys

26. Do you know anyone who works for the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☑ YES ☐ NO

If YES, whom do you know and what is the nature of your relationship with that person?

I know a number of judges and District Attorneys - I work with them everyday in court.

27. Have you ever had any dealings with any person in the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☑ YES ☐ NO

If YES, describe the nature of those dealings and when they occurred.

I deal with a number of District Attorneys in court on a daily basis

I also work with judges in court on a daily basis.

28. Do you know (on a personal, professional, or casual basis) any attorneys or judges? ☑ YES ☐ NO

If YES:

a) Please identify whom you know and what his or her job is.
I Know A Number of Attorneys & judges

b) How do you know this person (these people)?
work with them on a daily basis

c) What is the nature of your relationship with this person (these people)?
work relationship - I work with them on A daily basis.

29. Have you ever sued or been sued? ☐ YES ☑ NO

If YES, please tell us if you were the plaintiff (the party suing) or the defendant (the party being sued), the type of case, and the outcome:

30. Have you served as a juror for a:

a) ☐ Criminal case ___ times ☑ Civil case 1 times ☐ Grand Jury ___ times ☐ Never served

b) What type(s) of criminal case(s)? NA

c) What was the verdict(s)? NA

d) Were you ever the foreperson? ☐ YES ☑ NO

e) What did you like or dislike about serving on a jury? We did NOT get to finish the case when it was settled

31. Have you ever filed a criminal complaint or appeared as a witness in any criminal case? ☑ YES ☐ NO

If YES, please explain (including the nature of the case, and whether you appeared as a witness for the prosecution or for the defense). Criminal complaint - Assault
Witness on A Number of cases - testify as to documents in case files

32. Have you, any family members, or friends ever worked for the Arthur Andersen accounting firm?
☐ YES ☑ NO

If YES:

a) Who worked for Arthur Andersen? NA

b) When and where did they work for Arthur Andersen? NA

c) Describe the nature of their work for Arthur Andersen. NA

33. Have you, any family members, or friends ever worked for or applied for work with Enron Corporation or any Enron subsidiaries or partnerships? ☑ YES ☐ NO

If YES:

a) Who worked for or applied for work with Enron or its subsidiaries?

CLARENCE BERG ! Shelley Berg-Schultz

b) Were you or any family members or friends hired by Enron or its subsidiaries?

YES.

c) When did you or any family members or friends hold/apply for this job?

NOT SURE

d) When and how did this employment terminate?

NOT SURE

34. Have you, any family members, or friends ever done business with Enron Corporation or any Enron subsidiaries or partnerships? ☒ YES ☑ NO

If YES, please describe the nature of that business, when it occurred, and who was involved.

35. Have you, any family members, or friends ever owned stock in Enron Corporation or any Enron subsidiaries or partnerships? ☑ YES ☐ NO

If YES:

a) Approximately how many shares did you, your family member, or friend own?

NOT SURE

b) When did you, your family member, or friend purchase the shares?

NOT SURE

c) Did you, your family member, or friend ever sell the shares? If so, please identify when you sold, for what reason, and whether you made or lost money on the sale.

NOT SURE

36. Do you know anyone who lost their job or lost money in an investment, an IRA, 401K, or other retirement plan as a result of the bankruptcy of Enron? ☑ YES ☐ NO

If YES, please explain. lost money

37. Have you, any family members, or friends ever been employed by a company that has been affected by the Enron bankruptcy or the layoffs of Enron employees? ☑ YES ☐ NO

If YES, please explain. Lost money.

38. Do you know anyone, whom you have not mentioned above, who has been negatively affected or hurt in any way by what happened at Enron? ☐ YES ☑ NO

If YES, please tell us the name of the person and how they were affected.

39. Do you have an opinion about the cause of the collapse of Enron? ☑ YES ☐ NO

a) If YES, what is your opinion? It was sad.

b) On what do you base your opinion? people lost jobs & money - lots of money.

40. What do you think about the U.S. Government's investigation into the collapse of Enron?

I think they did the right thing

41. Have you heard or read about any of the Enron cases? ☑ YES ☐ NO

If YES, please tell us the name of all sources from which you have heard or read about the Enron cases (such as the Houston Chronicle, Time Magazine, Channel 13 news, O'Reilly Factor, Rush Limbaugh radio show, talking with friends, family or co-workers, internet news sources, blogs, etc.)?

on the news when the collapse happened

42. **Have you read any books or seen any movies about Enron?** ☐ **YES** ☑ **NO**

**If YES, please describe the book(s) or movie(s) and tell us what you thought of that book or movie:** NA

43. **Have you, your business, any family member, or your employer ever filed for bankruptcy?**

☐ **YES** ☑ **NO** **If YES, please tell us who filed and what happened.** NA

44. **Who makes the financial decisions in your household?** myself

45. **Do you currently, or have you ever, owned stocks (including mutual funds)?** ☐ **YES** ☑ **NO**

46. **Have you or your spouse lost a significant amount of money in the stock market in the past ten (10) years?** ☐ **YES** ☑ **NO** **If YES, please explain what happened.** NA

47. **Which of the following words would describe you? Please check (✓) all that apply:**

☐ **Assertive** ☐ **Analytical** ☐ **Business-minded** ☐ **Cautious** ☐ **Compulsive**
☐ **Creative** ☐ **Decisive** ☐ **Detailed** ☐ **Dedicated** ☐ **Entrepreneur**
☐ **Impulsive** ☐ **Innovative** ☐ **Judgmental** ☑ **Law & Order** ☑ **Leader**
☐ **Logical** ☑ **Loyal** ☐ **Opinionated** ☐ **Outspoken** ☐ **Practical**
☑ **Private** ☑ **Problem solver** ☐ **Pro-business** ☐ **Pro-worker** ☐ **Pro-Government**
☑ **Religious** ☐ **Skeptical** ☐ **Snap-decisions** ☐ **Strict** ☐ **Technical**
☑ **Thoughtful** ☑ **Trusting** ☑ **Visual** ☐ **Other:**

48. **Please list (3) people that you admire the** ***most*****:**

(1) Mother - Gloria
(2) Father - Fernando
(3) the Judge - Judge Sherman Ross

49. **Please list (3) people that you admire the** ***least*****:**

(1) NA
(2)
(3)

50. **What do you enjoy doing in your spare time?** Bowling, Softball and spending time with my family

51. Please list your (3) favorite television shows:

(1) CSI

(2) Will & GRACE

(3) Cold CASE

52. What courtroom or law-related television shows do you watch? CSI & Cold CASE AMERICAN Justice Investigative Report

53. What sites on the Internet do you regularly visit? Expedia

54. What newspapers, magazines, or trade publications do you read? Houston Chronicle

55. Which financial newspapers or magazines (such as the *Wall Street Journal*, *Business Week*, *Barrons*, *Economist*, *Forbes*, *Fortune*, *Money Magazine*, etc.), if any, do you read, and what financial programs, if any, do you watch on television? NONE

56. Which one source do you get *most* of your news from? television News.

57. Please list all unions or civic, social, political, professional, and religious groups or organizations to which you or your spouse/partner belong: NA

58. Have you held leadership roles in any of these organizations? ☐ YES ☑ NO

If YES, what was the role? NA

59. Please tell us about any volunteer work you do (now or past): NA

60. On social issues, are you: ☐ Very conservative ☐ Conservative ☑ Moderate ☐ Liberal ☐ Very liberal

61. On economic issues are you: ☐ Very conservative ☐ Conservative ☑ Moderate ☐ Liberal ☐ Very liberal

62. Political party preference: ☐ Democrat ☐ Independent ☐ Republican ☑ Other: NONE - whoever is best for the job.

63. Other than a traffic ticket, have you ever been arrested for, charged with, or convicted of a crime?

☐ YES ☑ NO

If YES:

a) Describe the nature of the charge. NA

b) Did this charge result in a conviction? NA

c) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea? NA

d) Do you feel you were treated fairly? NA

64. Other than a traffic ticket, have any of your family members ever been arrested for, charged with, or convicted of a crime? ☑ YES ☐ NO

If YES:

a) What family member? SISTER

b) Describe the nature of the charge. ASSAULT

c) Did this charge result in a conviction? NO

d) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea? NA

e) Do you feel your family member was treated fairly? yes.

65. Which best describes your total yearly household income?

☐ Under $25,000 ☑ $25 - $50,000 ☐ $50 - $100,000 ☐ $100 - $250,000 ☐ More than $250,000

66. Religious Preference: Catholic

67. Are you angry about what happened with Enron? ☐ YES ☑ NO

If YES, please explain. NA

68. Of all the things you have seen, heard, or read about Enron, what stands out in your mind? people that lost jobs and money

69. Do you, any family member, or friend know or have any connection with any of the defendants or their families in this case?

| | | |
|---|---|---|
| a) | Kenneth Lay | ☐ YES ☑ NO |
| b) | Jeffrey Skilling | ☐ YES ☑ NO |
| c) | Richard Causey | ☐ YES ☑ NO |

If you have answered YES as to any of the defendants, please explain. NA

70. Do you have an opinion about any of the following people?

a) Kenneth Lay (former Chairman and Chief Executive Officer of Enron) ☐ YES ☑ NO

If YES, what is your opinion? N/A

On what do you base your opinion? N/A

b) **Jeffrey Skilling (former Chief Operating Officer, President, Chief Executive Officer of Enron)**
☐ YES ☑ NO

If YES, what is your opinion? N/A

On what do you base your opinion? N/A

c) **Richard Causey (former Chief Accounting Officer of Enron)** ☐ YES ☑ NO

If YES, what is your opinion? N/A

On what do you base your opinion? N/A

d) **Sherron Watkins (former employee of Enron)** ☐ YES ☑ NO

If YES, what is your opinion? N/A

On what do you base your opinion? N/A

71. Based on anything you have heard, read, or been told do you have any opinion about the guilt or innocence of any of the following people:

a) **Richard Causey** ☐ YES ☑ NO
b) **Jeffrey Skilling** ☐ YES ☑ NO
c) **Kenneth Lay** ☐ YES ☑ NO

If you have answered YES as to any of these people, please explain. N/A

72. **The Judge in this case will instruct you that the indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.**

73. **Notwithstanding the instructions that the judge will give you at the trial, would any opinion you may have formed regarding Enron or any of the defendants prevent you from impartially considering the evidence presented during the trial of these three defendants?**

**a) Kenneth Lay** ☐ **YES** ☑ **NO** ☐ **UNSURE**
**b) Jeffrey Skilling** ☐ **YES** ☑ **NO** ☐ **UNSURE**
**c) Richard Causey** ☐ **YES** ☑ **NO** ☐ **UNSURE**

**If YES or UNSURE as to any of these people, please explain.** NA

74. **Is there anything else you feel is important for the court to know about you?** NA

75. **Would you like to serve on this jury?** ☐ **YES** ☐ **NO** ☑ **DON'T KNOW**

**Please explain your answer.** Going to be long. I Also deal with fugitives at my job and noone else really knows how to do the job.

76. Do you have a physical or other disability that would keep you from serving as a juror?

☐ YES ☑ NO If YES, please explain. NA

77. This trial will begin on January 17, 2006, and may last as long as 8 months. You may rely upon the jury being in session Monday through Thursday from 8:30 am until 5:00 pm. The court will not be in session during federal holidays. A trial of this length is a hardship on virtually every juror. Would serving as a juror in this case cause such a severe hardship that it would affect your ability to be a fair and impartial juror? ☐ YES ☑ NO

If YES, please explain.

## *OATH*

I hereby swear or affirm that all of my answers in this questionnaire are true and correct to the best of my ability.

Juror's Signature

11-4-05
Date

# EXPLANATION SHEET

JUROR QUESTIONNAIRE

67
(For Official Use Only)

This form helps the court select a jury. Please answer all blanks *in print and in black ink.* If the question does not apply to you, please write "NA" in it. The lawyers are entitled to information about potential jurors, but if you choose not to answer a question for private reasons, please draw a single line through it.

| | | | | | |
|---|---|---|---|---|---|
| Name<br>BARHAMAND, HOMI B | Age<br>59 | Birth Place<br>BOMBAY, INDIA | | Religious Preference<br>— | |
| City of Residence<br>HOUSTON | Years There<br>15 | Employer (ex if retired)<br>SELF EMPLOYED | | Type of Work<br>SHIP SURVEYOR | Years<br>13 |

| | | | | | |
|---|---|---|---|---|---|
| Children's Ages & Sex | 30 | 26 | | | Grown Children's Type of Work<br>Architect, Marketing |
| | F | M | | | |

| | | |
|---|---|---|
| Marital Status<br>MARRIED | Spouse's Name<br>SHAHNAZ | Spouse's Birth Place<br>BOMBAY, INDIA |

| | | |
|---|---|---|
| Spouse's Employer<br>Dr. Nikolaidis, MD | Type of Work<br>MEDICAL ASSISTANT | Years<br>10 |

| | | | |
|---|---|---|---|
| List governments that you & relatives have worked for. List law enforcement but not the military. | Who?<br>N.A. | Governmental Unit<br>N.A. | Type of Work<br>N.A. |
| Have you served in the military? | Yes [✓ No] | Branch & Highest Rank N.A. | Years N.A. |

| School Level | School and City | Subject Studied | Degree |
|---|---|---|---|
| High School | BOMBAY INDIA | | |
| College | BOMBAY / CALCUTTA INDIA | MARINE ENGG. | |
| Post College | | | |

Do you have any Legal, Para-Legal, or Medical Training? Yes No
If yes, describe

| | | | |
|---|---|---|---|
| Civil Suits | Have you sued or been sued? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes [✓ No] | Case Type |
| | Have you been a witness in court? | [✓ Yes] No | Case Type MARITIME CLAIM |
| Criminal Actions | Have you been charged criminally, other than a traffic ticket? | Yes [✓ No] | Case Type |
| | Have you made a criminal complaint? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes No | Case Type |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |

| | |
|---|---|
| List the magazines & newspapers you read. | HOUSTON CHRONICLE, |
| List the civic clubs, societies, unions, and political groups you and your spouse have joined | NONE (PROFESSIONAL BODY ONLY SOCIETY OF NAVAL ARCHITECTS & MARINE ENGINEERS) |
| Do you have a physical, or other inability that would keep you from serving as a juror? If yes, please describe | NO |

# JUROR QUESTIONNAIRE

**Juror #:** 067

1. **Full Name:** BARHAMAND, HOMI B **Gender:** ☑ **Male** ☐ **Female** **Age:** 59
2. **What is your race?** SOUTH ASIAN
3. **City of Residence:** HOUSTON/KINGWOOD **Years There:** 15 **Birth Place:** BOMBAY, INDIA
4. **What is your zip code?** 77345
5. **Who is your employer and what is your job (If unemployed/retired, what and where was your last job)?** SELF EMPLOYED
6. **For how many years have/did you worked there?** 13 Years.
7. **Describe your job duties or responsibilities:** MARINE CONSULTANCY, SHIP INSPECTIONS
8. **What jobs have you held in the past?** SHIP SURVEYOR WITH A SHIP CLASSIFICATION SOCIETY, SEAGOING ENGINEER
9. **Have you ever been laid off from a job?** ☐ **YES** ☑ **NO**

   **If YES, how long ago?**
10. **Have you or your immediate family ever been affected by any type of layoff or downsizing?** ☐ **YES** ☑ **NO**

    **If YES, please explain:**
11. **Have you ever been responsible for hiring, firing, or supervising employees?** ☑ **YES** ☐ **NO**
12. **How far did you go in school [If college or post-college, name the school(s) and any degrees received]?** COLLEGE AND PROFESSIONAL QUALIFICATIONS.
13. **Current marital status:** MARRIED **If married, for how long?** 32 yrs. **How many times?** ONCE
14. **Spouse's Name:** SHAHNAZ **Spouse's Birth Place:** BOMBAY, INDIA
15. **Who is your spouse/partner's employer and what is this person's job (If unemployed/retired, what and where was this person's last job)?** DR. NIKOLAIDIS, MD., MEDICAL ASSISTANT

Juror Number 067

# INSTRUCTIONS TO JURORS

The attached questionnaire must be answered by you. The answers will assist the judge and lawyers in selecting a jury. Answer all the questions to the best of your ability. There are no right or wrong answers. To answer correctly you must answer honestly.

We need your help so that we can select a fair and impartial jury in this case. Only the judge and lawyers will know your name. Do not assume anything from these questions. The fact they are being asked does not necessarily have anything to do with the evidence that you will hear.

The judge and lawyers know that every person has beliefs and prejudices concerning many things. You should answer with your true feelings, whatever they may be. Do not assume that any of your answers will qualify you or disqualify you from serving on this jury.

Please fully answer each question to the best of your ability. Write or print clearly. You must not ask anyone for help. Do the best you can.

If you cannot answer a question because you do not understand it, write "Do Not Understand" in the margin next to the question. If you cannot answer because you do not know, write "Do Not Know" in the margin next to the question. If you want to explain your answer do so briefly in the margin next to the question. If for any reason you do not want to answer any of the questions asked, please write the word "PRIVATE" next to the question and we will take this matter up with you privately.

We are all certain that you understand the importance of juries to our American system of justice. We are confident that you will not try to avoid your duty as a citizen to serve if it is at all possible to do so. Without your help our courts cannot operate properly under the Constitution.

An Explanation Sheet is provided for you at the end of the questionnaire to answer questions more fully. Rather than leaving out information, please turn to the end and put your answers on the explanation sheet provided.

Because your answers are part of the jury selection process and become part of the records of this court, your answers must be truthful and under penalty of perjury.

16. What jobs has this person held in the past? PHYSICIAN.

17. Please list the sex, age, and occupation for each of your children and step-children:
FEMALE, 30 Years Architect
MALE, 26 Years, Marketing Representative

18. List all governments and government agencies (do not include law enforcement or military) that you and your relatives have worked for and tell us who held this job, what governmental unit, and the type of work: N.A.

19. Have you, any family members, or friends ever been employed by or applied for a job with any law enforcement agency? ☐ YES ☑ NO

If YES:

a) Were you, your family member, or friend hired?

b) What job did you, your family member, or friend apply for and/or have?

c) When did you, your family member, or friend apply for and/or have this job?

d) Do you, your family member, or friend still hold this job today? ☐ YES ☐ NO

If NO, when and how did that employment end?

20. Have you or has anyone close to you ever had a negative experience dealing with law enforcement officers at the local or federal level (such as the police, FBI, INS, IRS, etc)? ☐ YES ☑ NO

If YES, please describe:

If YES, what is your opinion toward that agency now?

21. Have you or has anyone close to you ever had a negative experience dealing with the United States government or any governmental agency? ☐ YES ☑ NO

If YES, please describe:

If YES, what is your opinion toward that institution or agency now?

22. Have you or any family members ever owned your (their) own business? ☑ YES ☐ NO

If YES, please tell us what type of business and is the business still open? Fathers restaurant business, still operating in Bombay.

23. Have you ever worked for a large corporation? ☑ YES ☐ NO

If YES:

a) What corporation(s) did you work for and when? AMERICAN BUREAU OF SHIPPING

b) Are (were) you satisfied with your work at the corporation? ☑ YES ☐ NO

c) Have you ever had a bad experience with a large corporation? ☐ YES ☑ NO

If YES, please explain.

24. What are your opinions about the compensation that executives of large corporations receive? APPROPRIATE IN SOME CASES, NOT APPROPRIATE IN OTHERS

25. Have you had any education, training or experience in: accounting, bookkeeping, business, business management, finance, corporate finance, investment banking, law (criminal and/or civil), ethics, law enforcement, marketing, or stock trading? ☐ YES ☑ NO

If YES, please describe your education training or experience:

26. Do you know anyone who works for the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☑ NO

If YES, whom do you know and what is the nature of your relationship with that person?

27. Have you ever had any dealings with any person in the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☑ NO

If YES, describe the nature of those dealings and when they occurred.

28. Do you know (on a personal, professional, or casual basis) any attorneys or judges? ☐ YES ☑ NO

If YES:

a) Please identify whom you know and what his or her job is. ______

b) How do you know this person (these people)? ______

c) What is the nature of your relationship with this person (these people)? ______

29. Have you ever sued or been sued? ☐ YES ☑ NO

If YES, please tell us if you were the plaintiff (the party suing) or the defendant (the party being sued), the type of case, and the outcome: ______

30. Have you served as a juror for a:

a) ☐ Criminal case ___ times ☐ Civil case ___ times ☐ Grand Jury ___ times ☑ Never served

b) What type(s) of criminal case(s)? ______

c) What was the verdict(s)? ______

d) Were you ever the foreperson? ☐ YES ☐ NO

e) What did you like or dislike about serving on a jury? ______

31. Have you ever filed a criminal complaint or appeared as a witness in any criminal case? ☐ YES ☑ NO

If YES, please explain (including the nature of the case, and whether you appeared as a witness for the prosecution or for the defense). ______

32. Have you, any family members, or friends ever worked for the Arthur Andersen accounting firm?

☐ YES ☑ NO

If YES:

a) Who worked for Arthur Andersen? ______

b) When and where did they work for Arthur Andersen? ______

c) Describe the nature of their work for Arthur Andersen. ______

33. Have you, any family members, or friends ever worked for or applied for work with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES:

a) Who worked for or applied for work with Enron or its subsidiaries?

b) Were you or any family members or friends hired by Enron or its subsidiaries?

c) When did you or any family members or friends hold/apply for this job?

d) When and how did this employment terminate?

34. Have you, any family members, or friends ever done business with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES, please describe the nature of that business, when it occurred, and who was involved.

35. Have you, any family members, or friends ever owned stock in Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES:

a) Approximately how many shares did you, your family member, or friend own?

b) When did you, your family member, or friend purchase the shares?

c) Did you, your family member, or friend ever sell the shares? If so, please identify when you sold, for what reason, and whether you made or lost money on the sale.

36. Do you know anyone who lost their job or lost money in an investment, an IRA, 401K, or other retirement plan as a result of the bankruptcy of Enron? ☐ YES ☑ NO

If YES, please explain.

37. Have you, any family members, or friends ever been employed by a company that has been affected by the Enron bankruptcy or the layoffs of Enron employees? ☐ YES ☑ NO

If YES, please explain.

38. Do you know anyone, whom you have not mentioned above, who has been negatively affected or hurt in any way by what happened at Enron? ☐ YES ☑ NO

If YES, please tell us the name of the person and how they were affected.

39. Do you have an opinion about the cause of the collapse of Enron? ☐ YES ☑ NO

a) If YES, what is your opinion?

b) On what do you base your opinion?

40. What do you think about the U.S. Government's investigation into the collapse of Enron?

DO NOT KNOW

41. Have you heard or read about any of the Enron cases? ☑ YES ☐ NO

If YES, please tell us the name of all sources from which you have heard or read about the Enron cases (such as the Houston Chronicle, Time Magazine, Channel 13 news, O'Reilly Factor, Rush Limbaugh radio show, talking with friends, family or co-workers, internet news sources, blogs, etc.)?

HOUSTON CHRONICLE, INTERNET NEWS SOURCES

Juror Number 067

42. Have you read any books or seen any movies about Enron? ☐ YES ☑ NO

If YES, please describe the book(s) or movie(s) and tell us what you thought of that book or movie:

43. Have you, your business, any family member, or your employer ever filed for bankruptcy?

☐ YES ☑ NO If YES, please tell us who filed and what happened.

44. Who makes the financial decisions in your household? BOTH MYSELF AND SPOUSE

45. Do you currently, or have you ever, owned stocks (including mutual funds)? ☑ YES ☐ NO

46. Have you or your spouse lost a significant amount of money in the stock market in the past ten (10) years? ☐ YES ☑ NO If YES, please explain what happened.

47. Which of the following words would describe you? Please check (✓) all that apply:

☑ Assertive ☑ Analytical ☑ Business-minded ☐ Cautious ☐ Compulsive
☐ Creative ☐ Decisive ☐ Detailed ☑ Dedicated ☐ Entrepreneur
☐ Impulsive ☑ Innovative ☐ Judgmental ☑ Law & Order ☐ Leader
☑ Logical ☑ Loyal ☐ Opinionated ☑ Outspoken ☑ Practical
☐ Private ☑ Problem solver ☐ Pro-business ☐ Pro-worker ☐ Pro-Government
☑ Religious ☐ Skeptical ☐ Snap-decisions ☐ Strict ☑ Technical
☐ Thoughtful ☐ Trusting ☐ Visual ☐ Other:

48. Please list (3) people that you admire the *most*:

(1) ADI SHANKARACHARYA
(2) ZOROASTER
(3) SARDAR VALLABHAI PATEL

49. Please list (3) people that you admire the *least*:

(1) Dr, VISVESWARAN
(2) ~~PESHOTAN [illegible]~~ ADOLF HITLER
(3) JARNAL SINGH BINDRANWALE

50. What do you enjoy doing in your spare time? READING.

51. Please list your (3) favorite television shows:
(1) MONTY PHYTON
(2) BENNY HILL SHOW
(3) ARE YOU BEING SERVED

52. What courtroom or law-related television shows do you watch? NONE

53. What sites on the Internet do you regularly visit? MSN, YAHOO, GOOGLE, TIMES OF INDIA,

54. What newspapers, magazines, or trade publications do you read? HOUSTON CHRONICLE, NEWSWEEK, MARINE LOG,

55. Which financial newspapers or magazines (such as the *Wall Street Journal, Business Week, Barrons, Economist, Forbes, Fortune, Money Magazine,* etc.), if any, do you read, and what financial programs, if any, do you watch on television? —

56. Which one source do you get *most* of your news from? INTERNET

57. Please list all unions or civic, social, political, professional, and religious groups or organizations to which you or your spouse/partner belong: SOCIETY OF NAVAL ARCHITECTS AND MARINE ENGINEERS

58. Have you held leadership roles in any of these organizations? ☐ YES ☑ NO
If YES, what was the role?

59. Please tell us about any volunteer work you do (now or past): N.A.

60. On social issues, are you: ☐ Very conservative ☐ Conservative ☑ Moderate ☐ Liberal ☐ Very liberal

61. On economic issues are you: ☐ Very conservative ☐ Conservative ☑ Moderate ☐ Liberal ☐ Very liberal

62. Political party preference: ☐ Democrat ☑ Independent ☐ Republican ☐ Other:

63. Other than a traffic ticket, have you ever been arrested for, charged with, or convicted of a crime?
☐ YES ☑ NO
If YES:
a) Describe the nature of the charge.
b) Did this charge result in a conviction?
c) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?

d) Do you feel you were treated fairly? ______

64. Other than a traffic ticket, have any of your family members ever been arrested for, charged with, or convicted of a crime? ☐ YES ☑ NO

If YES:

a) What family member? ______

b) Describe the nature of the charge. ______

c) Did this charge result in a conviction? ______

d) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea? ______

e) Do you feel your family member was treated fairly? ______

65. Which best describes your total yearly household income?

☐ Under $25,000 ☐ $25 - $50,000 ☑ $50 - $100,000 ☐ $100 - $250,000 ☐ More than $250,000

66. Religious Preference: Same As Present

67. Are you angry about what happened with Enron? ☐ YES ☑ NO

If YES, please explain. ______

68. Of all the things you have seen, heard, or read about Enron, what stands out in your mind?

No Opinion

69. Do you, any family member, or friend know or have any connection with any of the defendants or their families in this case?

a) Kenneth Lay ☐ YES ☑ NO

b) Jeffrey Skilling ☐ YES ☑ NO

c) Richard Causey ☐ YES ☑ NO

If you have answered YES as to any of the defendants, please explain. ______

70. Do you have an opinion about any of the following people?

a) Kenneth Lay (former Chairman and Chief Executive Officer of Enron) ☐ YES ☑ NO

If YES, what is your opinion? ______________________________

On what do you base your opinion? ______________________________

b) Jeffrey Skilling (former Chief Operating Officer, President, Chief Executive Officer of Enron)

☐ YES ☑ NO

If YES, what is your opinion? ______________________________

On what do you base your opinion? ______________________________

c) Richard Causey (former Chief Accounting Officer of Enron) ☐ YES ☑ NO

If YES, what is your opinion? ______________________________

On what do you base your opinion? ______________________________

d) Sherron Watkins (former employee of Enron) ☐ YES ☑ NO

If YES, what is your opinion? ______________________________

On what do you base your opinion? ______________________________

71. Based on anything you have heard, read, or been told do you have any opinion about the guilt or innocence of any of the following people:

a) Richard Causey ☐ YES ☑ NO
b) Jeffrey Skilling ☐ YES ☑ NO
c) Kenneth Lay ☐ YES ☑ NO

If you have answered YES as to any of these people, please explain. ______________________________

72. The Judge in this case will instruct you that the indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

73. Notwithstanding the instructions that the judge will give you at the trial, would any opinion you may have formed regarding Enron or any of the defendants prevent you from impartially considering the evidence presented during the trial of these three defendants?

a) Kenneth Lay ☐ YES ☑ NO ☐ UNSURE
b) Jeffrey Skilling ☐ YES ☑ NO ☐ UNSURE
c) Richard Causey ☐ YES ☑ NO ☐ UNSURE

If YES or UNSURE as to any of these people, please explain.

74. Is there anything else you feel is important for the court to know about you? NO

75. Would you like to serve on this jury? ☐ YES ☐ NO ☑ DON'T KNOW

Please explain your answer.

76. Do you have a physical or other disability that would keep you from serving as a juror?

☐ YES ☑ NO If YES, please explain. ______________________________

77. This trial will begin on January 17, 2006, and may last as long as 6 months. You may rely upon the jury being in session Monday through Thursday from 8:30 am until 5:00 pm. The court will not be in session during federal holidays. A trial of this length is a hardship on virtually every juror. Would serving as a juror in this case cause such a severe hardship that it would affect your ability to be a fair and impartial juror? ☐ YES ☐ NO

If YES, please explain. ______________________________

Don't Know

## OATH

I hereby swear or affirm that all of my answers in this questionnaire are true and correct to the best of my ability.

Juror's Signature

11/15/05

Date

Juror Number 067

# EXPLANATION SHEET

78
(For Official Use Only)

JUROR QUESTIONNAIRE

**This form helps the court select a jury. Please answer all blanks *in print and in black ink*. If the question does not apply to you, please write "NA" in it. The lawyers are entitled to information about potential jurors, but if you choose not to answer a question for private reasons, please draw a single line through it.**

| | | | |
|---|---|---|---|
| Name<br>Wendy Vaughan | Age<br>34 | Birth Place<br>Caracus, Venezuela | Religious Preference<br>Christian |

| | | | | |
|---|---|---|---|---|
| City of Residence<br>Katy | Years There<br>3 | Employer (ex if retired)<br>Self-employed | Type of Work<br>Contractor | Years<br>1 |

| | | | | | |
|---|---|---|---|---|---|
| Children's Ages & Sex | 15 | 11 | | | Grown Children's Type of Work |
| | F | F | | | N/A |

| | | |
|---|---|---|
| Marital Status<br>Divorced | Spouse's Name<br>N/A | Spouse's Birth Place<br>N/A |

| | | |
|---|---|---|
| Spouse's Employer<br>N/A | Type of Work<br>N/A | Years<br>N/A |

| | | | |
|---|---|---|---|
| List governments that you & relatives have worked for. List law enforcement but not the military. | Who?<br>N/A | Governmental Unit<br>N/A | Type of Work<br>N/A |

| | | | |
|---|---|---|---|
| Have you served in the military? | Yes [✓ No] | Branch & Highest Rank<br>N/A | Years<br>N/A |

| School Level | School and City | Subject Studied | Degree |
|---|---|---|---|
| High School | High School for the Performing + Visual Arts | Music | Yes |
| College | Associate of Arts | Business | Yes |
| Post College | | | |

Do you have any Legal, Para-Legal, or Medical Training? Yes [✓ No]
If yes, describe

| | | | |
|---|---|---|---|
| Civil Suits | Have you sued or been sued? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes No | Case Type |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |
| Criminal Actions | Have you been charged criminally, other than a traffic ticket? | Yes [✓ No] | Case Type |
| | Have you made a criminal complaint? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes No | Case Type |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |

| | |
|---|---|
| List the magazines & newspapers you read | Oprah Magazine, Health + Fitness, Entertainment Weekly |
| List the civic clubs, societies, unions, and political groups you and your spouse have joined | N/A |
| Do you have a physical, or other inability that would keep you from serving as a juror?<br>If yes, please describe. | N/A |

Juror Number 078

# INSTRUCTIONS TO JURORS

**The attached questionnaire must be answered by you. The answers will assist the judge and lawyers in selecting a jury. Answer all the questions to the best of your ability. There are no right or wrong answers. To answer correctly you must answer honestly.**

**We need your help so that we can select a fair and impartial jury in this case. Only the judge and lawyers will know your name. Do not assume anything from these questions. The fact they are being asked does not necessarily have anything to do with the evidence that you will hear.**

**The judge and lawyers know that every person has beliefs and prejudices concerning many things. You should answer with your true feelings, whatever they may be. Do not assume that any of your answers will qualify you or disqualify you from serving on this jury.**

**Please fully answer each question to the best of your ability. Write or print clearly. You must not ask anyone for help. Do the best you can.**

**If you cannot answer a question because you do not understand it, write "Do Not Understand" in the margin next to the question. If you cannot answer because you do not know, write "Do Not Know" in the margin next to the question. If you want to explain your answer do so briefly in the margin next to the question. If for any reason you do not want to answer any of the questions asked, please write the word "PRIVATE" next to the question and we will take this matter up with you privately.**

**We are all certain that you understand the importance of juries to our American system of justice. We are confident that you will not try to avoid your duty as a citizen to serve if it is at all possible to do so. Without your help our courts cannot operate properly under the Constitution.**

**An Explanation Sheet is provided for you at the end of the questionnaire to answer questions more fully. Rather than leaving out information, please turn to the end and put your answers on the explanation sheet provided.**

**Because your answers are part of the jury selection process and become part of the records of this court, your answers must be truthful and under penalty of perjury.**

# JUROR QUESTIONNAIRE

Juror #: 078

1. Full Name: Wendy Vaughan Gender: ☐ Male ☒ Female Age: 38
2. What is your race? Hispanic
3. City of Residence: Katy Years There: 3 Birth Place: Caracas, Venezuela
4. What is your zip code? 77450
5. Who is your employer and what is your job (if unemployed/retired, what and where was your last job)?
Self-employed. Roofing sales
6. For how many years have/did you worked there? 8 mo.
7. Describe your job duties or responsibilities: Contractor/Sales/Management
8. What jobs have you held in the past? Sales in roofing industry/Dispatcher for courier company
9. Have you ever been laid off from a job? ☐ YES ☒ NO
If YES, how long ago? N/A
10. Have you or your immediate family ever been affected by any type of layoff or downsizing?
☐ YES ☒ NO
If YES, please explain:
11. Have you ever been responsible for hiring, firing, or supervising employees? ☒ YES ☐ NO
12. How far did you go in school [If college or post-college, name the school(s) and any degrees received]?
Finished 2 years of community college & received A.A. degree.
13. Current marital status: Divorced If married, for how long? N/A How many times? N/A
14. Spouse's Name: N/A Spouse's Birth Place: N/A
15. Who is your spouse/partner's employer and what is this person's job (if unemployed/retired, what and where was this person's last job)? I have a partner. She works with me in my business.

16. What jobs has this person held in the past? Courier / House cleaning

17. Please list the sex, age, and occupation for each of your children and step-children:
F / 11 / Student
F / 15 / Student

18. List all governments and government agencies (do not include law enforcement or military) that you and your relatives have worked for and tell us who held this job, what governmental unit, and the type of work: N/A

19. Have you, any family members, or friends ever been employed by or applied for a job with any law enforcement agency? ☐ YES ☒ NO

If YES:

a) Were you, your family member, or friend hired? N/A

b) What job did you, your family member, or friend apply for and/or have? N/A

c) When did you, your family member, or friend apply for and/or have this job? N/A

d) Do you, your family member, or friend still hold this job today? ☐ YES ☐ NO

If NO, when and how did that employment end? N/A

20. Have you or has anyone close to you ever had a negative experience dealing with law enforcement officers at the local or federal level (such as the police, FBI, INS, IRS, etc)? ☐ YES ☒ NO

If YES, please describe: N/A

If YES, what is your opinion toward that agency now? N/A

21. Have you or has anyone close to you ever had a negative experience dealing with the United States government or any governmental agency? ☐ YES ☒ NO

If YES, please describe: N/A

If YES, what is your opinion toward that institution or agency now? N/A

22. Have you or any family members ever owned your (their) own business? ☒ YES ☐ NO

If YES, please tell us what type of business and is the business still open? Roofing sales. Yes.

23. Have you ever worked for a large corporation? ☐ YES ☑ NO

If YES:

a) What corporation(s) did you work for and when? N/A

b) Are (were) you satisfied with your work at the corporation? ☐ YES ☐ NO

c) Have you ever had a bad experience with a large corporation? ☑ YES ☐ NO

If YES, please explain. I was a member of Bally Total Fitness. I felt they were not fair when I wanted to cancel my contract. they were also inattentive while I was a member. I was dissatisfied with their services.

24. What are your opinions about the compensation that executives of large corporations receive? I believe they have the right to recieve as much as they can.

25. Have you had any education, training or experience in: accounting, bookkeeping, business, business management, finance, corporate finance, investment banking, law (criminal and/or civil), ethics, law enforcement, marketing, or stock trading? ☑ YES ☐ NO

If YES, please describe your education training or experience: I studied Accounting in College. I use accounting software.

26. Do you know anyone who works for the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☑ NO

If YES, whom do you know and what is the nature of your relationship with that person? N/A

27. Have you ever had any dealings with any person in the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☑ NO

If YES, describe the nature of those dealings and when they occurred.

28. Do you know (on a personal, professional, or casual basis) any attorneys or judges? ☑ YES ☐ NO

If YES:

a) Please identify whom you know and what his or her job is. Shannon Warren - attorney

b) How do you know this person (these people)? Friend & my attorney

c) What is the nature of your relationship with this person (these people)?
She was hired to handle my divorce and I use her legal services today.

29. Have you ever sued or been sued? ☐ YES ☑ NO

If YES, please tell us if you were the plaintiff (the party suing) or the defendant (the party being sued), the type of case, and the outcome: N/A

30. Have you served as a juror for a:

a) ☐ Criminal case ___ times ☐ Civil case ___ times ☐ Grand Jury ___ times ☑ Never served

b) What type(s) of criminal case(s)? N/A

c) What was the verdict(s)? N/A

d) Were you ever the foreperson? ☐ YES ☐ NO

e) What did you like or dislike about serving on a jury? N/A

31. Have you ever filed a criminal complaint or appeared as a witness in any criminal case? ☐ YES ☑ NO

If YES, please explain (including the nature of the case, and whether you appeared as a witness for the prosecution or for the defense). N/A

32. Have you, any family members, or friends ever worked for the Arthur Andersen accounting firm?

☐ YES ☑ NO

If YES:

a) Who worked for Arthur Andersen? N/A

b) When and where did they work for Arthur Andersen? N/A

c) Describe the nature of their work for Arthur Andersen. N/A

33. Have you, any family members, or friends ever worked for or applied for work with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES:

a) Who worked for or applied for work with Enron or its subsidiaries? N/A

b) Were you or any family members or friends hired by Enron or its subsidiaries? N/A

c) When did you or any family members or friends hold/apply for this job? N/A

d) When and how did this employment terminate? N/A

34. Have you, any family members, or friends ever done business with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES, please describe the nature of that business, when it occurred, and who was involved. N/A

35. Have you, any family members, or friends ever owned stock in Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES:

a) Approximately how many shares did you, your family member, or friend own? N/A

b) When did you, your family member, or friend purchase the shares? N/A

c) Did you, your family member, or friend ever sell the shares? If so, please identify when you sold, for what reason, and whether you made or lost money on the sale. N/A

36. Do you know anyone who lost their job or lost money in an investment, an IRA, 401K, or other retirement plan as a result of the bankruptcy of Enron? ☐ YES ☑ NO

If YES, please explain. N/A

37. Have you, any family members, or friends ever been employed by a company that has been affected by the Enron bankruptcy or the layoffs of Enron employees? ☐ YES ☑ NO

**If YES, please explain.** N/A

38. **Do you know anyone, whom you have not mentioned above, who has been negatively affected or hurt in any way by what happened at Enron?** ☐ **YES** ☒ **NO**

**If YES, please tell us the name of the person and how they were affected.** N/A

39. **Do you have an opinion about the cause of the collapse of Enron?** ☐ **YES** ☒ **NO**

**a) If YES, what is your opinion?**

**b) On what do you base your opinion?**

40. **What do you think about the U.S. Government's investigation into the collapse of Enron?**

I think if there were illegal activities, the government should investigate.

41. **Have you heard or read about any of the Enron cases?** ☐ **YES** ☒ **NO**

**If YES, please tell us the name of all sources from which you have heard or read about the Enron cases (such as the Houston Chronicle, Time Magazine, Channel 13 news, O'Reilly Factor, Rush Limbaugh radio show, talking with friends, family or co-workers, internet news sources, blogs, etc.)?** N/A

42. Have you read any books or seen any movies about Enron? ☐ YES ☑ NO

If YES, please describe the book(s) or movie(s) and tell us what you thought of that book or movie: N/A

43. Have you, your business, any family member, or your employer ever filed for bankruptcy?

☑ YES ☐ NO If YES, please tell us who filed and what happened. I filed for bankruptcy in 2003 and it was discharged.

44. Who makes the financial decisions in your household? Myself & my partner.

45. Do you currently, or have you ever, owned stocks (including mutual funds)? ☐ YES ☑ NO

46. Have you or your spouse lost a significant amount of money in the stock market in the past ten (10) years? ☐ YES ☐ NO If YES, please explain what happened. N/A

47. Which of the following words would describe you? Please check (✓) all that apply:

☐ Assertive ☐ Analytical ☑ Business-minded ☐ Cautious ☐ Compulsive
☑ Creative ☐ Decisive ☐ Detailed ☑ Dedicated ☑ Entrepreneur
☐ Impulsive ☐ Innovative ☐ Judgmental ☐ Law & Order ☑ Leader
☑ Logical ☐ Loyal ☑ Opinionated ☐ Outspoken ☐ Practical
☐ Private ☑ Problem solver ☑ Pro-business ☐ Pro-worker ☐ Pro-Government
☐ Religious ☐ Skeptical ☐ Snap-decisions ☐ Strict ☐ Technical
☐ Thoughtful ☐ Trusting ☐ Visual ☐ Other:

48. Please list (3) people that you admire the *most*:

(1) Oprah Winfrey
(2) Dr. Phil McGraw
(3) Shannon Warren - my attorney

49. Please list (3) people that you admire the *least*:

(1) Kevin Vaughan - my ex
(2) Michael Moore
(3) Pat Robertson

50. What do you enjoy doing in your spare time? Playing music, singing, working out, reading, computing

51. Please list your (3) favorite television shows:

(1) Oprah

(2) Lost

(3) 24

52. What courtroom or law-related television shows do you watch? Law & Order

53. What sites on the internet do you regularly visit? Amazon. com / Ebay
Wal-Mart. com

54. What newspapers, magazines, or trade publications do you read? Oprah magazine, Muscle + Fitness, Entertainment Weekly

55. Which financial newspapers or magazines (such as the *Wall Street Journal*, *Business Week*, *Barrons*, *Economist*, *Forbes*, *Fortune*, *Money Magazine*, etc.), if any, do you read, and what financial programs, if any, do you watch on television? None

56. Which one source do you get *most* of your news from? Fox News

57. Please list all unions or civic, social, political, professional, and religious groups or organizations to which you or your spouse/partner belong: United Methodist Church

58. Have you held leadership roles in any of these organizations? ☐ YES ☑ NO
If YES, what was the role? N/A

59. Please tell us about any volunteer work you do (now or past): N/A

60. On social issues, are you: ☐ Very conservative ☐ Conservative ☑ Moderate ☐ Liberal ☐ Very liberal

61. On economic issues are you: ☐ Very conservative ☑ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

62. Political party preference: ☐ Democrat ☐ Independent ☑ Republican ☐ Other: ________

63. Other than a traffic ticket, have you ever been arrested for, charged with, or convicted of a crime?
☐ YES ☑ NO

If YES:

a) Describe the nature of the charge. N/A

b) Did this charge result in a conviction? N/A

c) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea? N/A

d) Do you feel you were treated fairly? N/A

64. Other than a traffic ticket, have any of your family members ever been arrested for, charged with, or convicted of a crime? ☑ YES ☐ NO

If YES:

a) What family member? Brother

b) Describe the nature of the charge. Went to see a customer carrying a weapon

c) Did this charge result in a conviction? No

d) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?

e) Do you feel your family member was treated fairly? Yes.

65. Which best describes your total yearly household income?

☐ Under $25,000 ☐ $25 - $50,000 ☑ $50 - $100,000 ☐ $100 - $250,000 ☐ More than $250,000

66. Religious Preference: Methodist

67. Are you angry about what happened with Enron? ☐ YES ☑ NO

If YES, please explain. N/A

68. Of all the things you have seen, heard, or read about Enron, what stands out in your mind?

Many people lost their jobs.

69. Do you, any family member, or friend know or have any connection with any of the defendants or their families in this case?

a) Kenneth Lay ☐ YES ☑ NO

b) Jeffrey Skilling ☐ YES ☑ NO

c) Richard Causey ☐ YES ☑ NO

If you have answered YES as to any of the defendants, please explain.

70. Do you have an opinion about any of the following people?

a) Kenneth Lay (former Chairman and Chief Executive Officer of Enron) ☐ YES ☑ NO

**If YES, what is your opinion?** ____________________

**On what do you base your opinion?** ____________________

**b) Jeffrey Skilling (former Chief Operating Officer, President, Chief Executive Officer of Enron)**

**☐ YES ☑ NO**

**If YES, what is your opinion?** ____________________

**On what do you base your opinion?** ____________________

**c) Richard Causey (former Chief Accounting Officer of Enron) ☐ YES ☑ NO**

**If YES, what is your opinion?** ____________________

**On what do you base your opinion?** ____________________

**d) Sherron Watkins (former employee of Enron) ☐ YES ☐ NO**

**If YES, what is your opinion?** ____________________

**On what do you base your opinion?** ____________________

**71. Based on anything you have heard, read, or been told do you have any opinion about the guilt or innocence of any of the following people:**

| | | |
|---|---|---|
| **a) Richard Causey** | **☐ YES** | **☑ NO** |
| **b) Jeffrey Skilling** | **☐ YES** | **☑ NO** |
| **c) Kenneth Lay** | **☐ YES** | **☑ NO** |

**If you have answered YES as to any of these people, please explain.** ____________________

72. The Judge in this case will instruct you that the indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

73. Notwithstanding the instructions that the judge will give you at the trial, would any opinion you may have formed regarding Enron or any of the defendants prevent you from impartially considering the evidence presented during the trial of these three defendants?

| | | | |
|---|---|---|---|
| a) Kenneth Lay | ☐ YES | ☑ NO | ☐ UNSURE |
| b) Jeffrey Skilling | ☐ YES | ☑ NO | ☐ UNSURE |
| c) Richard Causey | ☐ YES | ☑ NO | ☐ UNSURE |

If YES or UNSURE as to any of these people, please explain. ______

74. Is there anything else you feel is important for the court to know about you? ______

75. Would you like to serve on this jury? ☐ YES ☐ NO ☑ DON'T KNOW

Please explain your answer. I don't know much about what actually happened. It has been a few years since Enron was in the news.

76. **Do you have a physical or other disability that would keep you from serving as a juror?**

**☐ YES ☑ NO If YES, please explain.**

77. **This trial will begin on January 17, 2006, and may last as long as 6 months. You may rely upon the jury being in session Monday through Thursday from 8:30 am until 5:00 pm. The court will not be in session during federal holidays. A trial of this length is a hardship on virtually every juror. Would serving as a juror in this case cause such a severe hardship that it would affect your ability to be a fair and impartial juror? ☑ YES ☐ NO**

**If YES, please explain.** I run my own business. If I am away for that much time it would put me out of business. I don't have employees to manage the business. I run it on my own.

## OATH

**I hereby swear or affirm that all of my answers in this questionnaire are true and correct to the best of my ability.**

Wendy H. Vay 11/18/05
**Juror's Signature** **Date**

Juror Number 078

# EXPLANATION SHEET

JUROR QUESTIONNAIRE

84
(For Official Use Only)

This form helps the court select a jury. Please answer all blanks *in print and in black ink.* If the question does not apply to you, please write "NA" in it. The lawyers are entitled to information about potential jurors, but if you choose not to answer a question for private reasons, please draw a single line through it.

| | | | |
|---|---|---|---|
| Name Nancy Thomas | Age 61 | Birth Place Hous TX | Religious Preference Christien |

| | | | | |
|---|---|---|---|---|
| City of Residence Magnolia | Years There 5 | Employer (ex if retired) Home Interiors Gifts Retired | Type of Work Mgmt/Sales/Mtv | Years 23 |

| | | | | | |
|---|---|---|---|---|---|
| Children's Ages & Sex Julie F 46<br>Natalie F 35 | | | | | Grown Children's Type of Work Julie<br>Natalie - mom |

| | | |
|---|---|---|
| Marital Status married | Spouse's Name James Allen Thomas | Spouse's Birth Place Alabame |

| | | |
|---|---|---|
| Spouse's Employer Retied from HPD | Type of Work Lieut | Years 33 |

| | | | |
|---|---|---|---|
| List governments that you & relatives have worked for. List law enforcement but not the military. | Who? Son in Law<br>Bro in Law<br>husband | Governmental Unit Pasadena Police<br>Dist Attorney office<br>HPD | Type of Work Investigator<br>Lieut/retired |

| | | | |
|---|---|---|---|
| Have you served in the military? | Yes [✓ No] | Branch & Highest Rank | Years |

| School Level | School and City | Subject Studied | Degree |
|---|---|---|---|
| High School | Galena Park High | | |
| College | | | |
| Post College | | | |

Do you have any Legal, Para-Legal, or Medical Training? Yes [✓ No]
If yes, describe

| | | | |
|---|---|---|---|
| Civil Suits | Have you sued or been sued? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes No | Case Type |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |
| Criminal Actions | Have you been charged criminally, other than a traffic ticket? | Yes [✓ No] | Case Type |
| | Have you made a criminal complaint? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes No | Case Type |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |

| | |
|---|---|
| List the magazines & newspapers you read. | Houston<br>Family Motor Coach, Southern Living |
| List the civic clubs, societies, unions, and political groups you and your spouse have joined | — |
| Do you have a physical, or other inability that would keep you from serving as a juror? If yes, please describe. | Husband is disabled w/stroke. Can take care of self - Needs Looked after |

# JUROR QUESTIONNAIRE

**Juror #:** 084

1. **Full Name:** Nancy E Thomas **Gender:** ☐ Male ☑ Female **Age:** 61
2. **What is your race?** Cau.
3. **City of Residence:** Magnolia **Years There:** 5 **Birth Place:** Houston
4. **What is your zip code?** 77354
5. **Who is your employer and what is your job (if unemployed/retired, what and where was your last job)?** Retired Sales/Motivation Mgr for Decorating Co - Direct Sales
6. **For how many years have/did you worked there?** 23
7. **Describe your job duties or responsibilities:** Training, motivating new Ind. contractors - for directsales. / In-Home Shopping. Managing 900 or more
8. **What jobs have you held in the past?** Dental Assistant
9. **Have you ever been laid off from a job?** ☐ YES ☑ NO
   **If YES, how long ago?**
10. **Have you or your immediate family ever been affected by any type of layoff or downsizing?** ☐ YES ☑ NO
    **If YES, please explain:**
11. **Have you ever been responsible for hiring, firing, or supervising employees?** ☑ YES ☐ NO
12. **How far did you go in school [If college or post-college, name the school(s) and any degrees received]?** High School
13. **Current marital status:** married **If married, for how long?** 42 **How many times?** 1
14. **Spouse's Name:** James Allen thomas **Spouse's Birth Place:** Alabama
15. **Who is your spouse/partner's employer and what is this person's job (if unemployed/retired, what and where was this person's last job)?** Lieut. Houston Police Dept

Juror Number 084

16. What jobs has this person held in the past? None

17. Please list the sex, age, and occupation for each of your children and step-children:
Julie Candelari 40 female Distribution Analyst Shell Oil
Natalie Hoelzer 25 "

18. List all governments and government agencies (do not include law enforcement or military) that you and your relatives have worked for and tell us who held this job, what governmental unit, and the type of work: —

19. Have you, any family members, or friends ever been employed by or applied for a job with any law enforcement agency? ☑ YES ☐ NO
If YES:
a) Were you, your family member, or friend hired? yes Brother-in-Law
b) What job did you, your family member, or friend apply for and/or have? Son in Law – presently emp. w/ Pasadena Police Husband, Lieut HPD
c) When did you, your family member, or friend apply for and/or have this job? Presently Son in Law – Husband retired 10 yrs
d) Do you, your family member, or friend still hold this job today? ☑ YES ☐ NO
If NO, when and how did that employment end?

20. Have you or has anyone close to you ever had a negative experience dealing with law enforcement officers at the local or federal level (such as the police, FBI, INS, IRS, etc)? ☐ YES ☑ NO
If YES, please describe:
If YES, what is your opinion toward that agency now?

21. Have you or has anyone close to you ever had a negative experience dealing with the United States government or any governmental agency? ☐ YES ☑ NO
If YES, please describe:
If YES, what is your opinion toward that institution or agency now?

22. Have you or any family members ever owned your (their) own business? ☐ YES ☑ NO

If YES, please tell us what type of business and is the business still open?

23. Have you ever worked for a large corporation? ☐ YES ☑ NO

If YES:

a) What corporation(s) did you work for and when?

b) Are (were) you satisfied with your work at the corporation? ☐ YES ☐ NO

c) Have you ever had a bad experience with a large corporation? ☐ YES ☑ NO

If YES, please explain.

24. What are your opinions about the compensation that executives of large corporations receive?

I believe in Balance.

25. Have you had any education, training or experience in: accounting, bookkeeping, business, business management, finance, corporate finance, investment banking, law (criminal and/or civil), ethics, law enforcement, marketing, or stock trading? ☐ YES ☑ NO

If YES, please describe your education training or experience:

26. Do you know anyone who works for the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☐ NO

If YES, whom do you know and what is the nature of your relationship with that person?

Brother JP Precient 3 George Risner

Bro In Law Walker McAnnally Investigator Harris County District Attorney

27. Have you ever had any dealings with any person in the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☑ NO

If YES, describe the nature of those dealings and when they occurred.

28. Do you know (on a personal, professional, or casual basis) any attorneys or judges? ☑ YES ☐ NO

If YES: Bro JP

a) Please identify whom you know and what his or her job is. George Risner JP Pasadena

b) How do you know this person (those people)? Brother

c) What is the nature of your relationship with this person (these people)? Family

29. Have you ever sued or been sued? ☐ YES ☑ NO

If YES, please tell us if you were the plaintiff (the party suing) or the defendant (the party being sued), the type of case, and the outcome:

30. Have you served as a juror for a:

a) ☐ Criminal case ___ times ☐ Civil case ___ times ☐ Grand Jury ___ times ☑ Never served

b) What type(s) of criminal case(s)?

c) What was the verdict(s)?

d) Were you ever the foreperson? ☐ YES ☐ NO

e) What did you like or dislike about serving on a jury?

31. Have you ever filed a criminal complaint or appeared as a witness in any criminal case? ☐ YES ☑ NO

If YES, please explain (including the nature of the case, and whether you appeared as a witness for the prosecution or for the defense).

32. Have you, any family members, or friends ever worked for the Arthur Andersen accounting firm?

☐ YES ☑ NO

If YES:

a) Who worked for Arthur Andersen?

b) When and where did they work for Arthur Andersen?

c) Describe the nature of their work for Arthur Andersen.

33. Have you, any family members, or friends ever worked for or applied for work with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES:

a) Who worked for or applied for work with Enron or its subsidiaries? ______

b) Were you or any family members or friends hired by Enron or its subsidiaries? ______

c) When did you or any family members or friends hold/apply for this job? ______

d) When and how did this employment terminate? ______

34. Have you, any family members, or friends ever done business with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES, please describe the nature of that business, when it occurred, and who was involved. ______

35. Have you, any family members, or friends ever owned stock in Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO

If YES:

a) Approximately how many shares did you, your family member, or friend own? ______

b) When did you, your family member, or friend purchase the shares? ______

c) Did you, your family member, or friend ever sell the shares? If so, please identify when you sold, for what reason, and whether you made or lost money on the sale. ______

36. Do you know anyone who lost their job or lost money in an investment, an IRA, 401K, or other retirement plan as a result of the bankruptcy of Enron? ☐ YES ☑ NO

If YES, please explain. ______

37. Have you, any family members, or friends ever been employed by a company that has been affected by the Enron bankruptcy or the layoffs of Enron employees? ☐ YES ☑ NO

If YES, please explain. ____________________

38. Do you know anyone, whom you have not mentioned above, who has been negatively affected or hurt in any way by what happened at Enron? ☐ YES ☑ NO

If YES, please tell us the name of the person and how they were affected. ____________________

39. Do you have an opinion about the cause of the collapse of Enron? ☐ YES ☑ NO

a) If YES, what is your opinion? ____________________

b) On what do you base your opinion? ____________________

40. What do you think about the U.S. Government's Investigation into the collapse of Enron?

41. Have you heard or read about any of the Enron cases? ☐ YES ☑ NO

If YES, please tell us the name of all sources from which you have heard or read about the Enron cases (such as the Houston Chronicle, Time Magazine, Channel 13 news, O'Reilly Factor, Rush Limbaugh radio show, talking with friends, family or co-workers, internet news sources, blogs, etc.)? ____________________

42. Have you read any books or seen any movies about Enron? ☐ YES ☑ NO

If YES, please describe the book(s) or movie(s) and tell us what you thought of that book or movie:

43. Have you, your business, any family member, or your employer ever filed for bankruptcy?

☐ YES ☑ NO If YES, please tell us who filed and what happened.

44. Who makes the financial decisions in your household? both parties

45. Do you currently, or have you ever, owned stocks (including mutual funds)? ☑ YES ☐ NO

46. Have you or your spouse lost a significant amount of money in the stock market in the past ten (10) years? ☑ YES ☐ NO If YES, please explain what happened.

normal up & downs
especially last 3 yrs

47. Which of the following words would describe you? Please check (✓) all that apply:

☐ Assertive
☑ Creative
☐ Impulsive
☐ Logical
☐ Private
☑ Religious
☑ Thoughtful

☐ Analytical
☐ Decisive
☑ Innovative
☑ Loyal
☐ Problem solver
☐ Skeptical
☑ Trusting

☐ Business-minded
☐ Detailed
☐ Judgmental
☐ Opinionated
☐ Pro-business
☐ Snap-decisions
☑ Visual

☐ Cautious
☑ Dedicated
☑ Law & Order
☐ Outspoken
☐ Pro-worker
☐ Strict
☐ Other:

☐ Compulsive
☐ Entrepreneur
☑ Leader
☑ Practical
☑ Pro-Government
☐ Technical

48. Please list (3) people that you admire the *most*:

(1) Kay Arthur
(2) Billy Graham
(3) George Bush Jr & Sr

49. Please list (3) people that you admire the *least*:

(1) Hillary Clinton
(2) Bill Clinton
(3) Jesse Jackson

50. What do you enjoy doing in your spare time? reading, grandson, outside - Bible Study - Excercise

51. Please list your (3) favorite television shows:

(1) ______

(2) ______

(3) CSI

52. What courtroom or law-related television shows do you watch? None -

53. What sites on the internet do you regularly visit? E Mail

54. What newspapers, magazines, or trade publications do you read? Houston Chronicle

55. Which financial newspapers or magazines (such as the *Wall Street Journal, Business Week, Barrons, Economist, Forbes, Fortune, Money Magazine*, etc.), if any, do you read, and what financial programs, if any, do you watch on television? None

56. Which *one* source do you get *most* of your news from? Morning news

57. Please list all unions or civic, social, political, professional, and religious groups or organizations to which you or your spouse/partner belong: None

58. Have you held leadership roles in any of these organizations? ☐ YES ☑ NO

If YES, what was the role? ______

59. Please tell us about any volunteer work you do (now or past): Church -

60. On social issues, are you: ☐ Very conservative ☐ Conservative ☑ Moderate ☐ Liberal ☐ Very liberal

61. On economic issues are you: ☐ Very conservative ☐ Conservative ☑ Moderate ☐ Liberal ☐ Very liberal

62. Political party preference: ☐ Democrat ☐ Independent ☑ Republican ☐ Other: ______

63. Other than a traffic ticket, have you ever been arrested for, charged with, or convicted of a crime?

☐ YES ☑ NO

If YES:

a) Describe the nature of the charge. ______

b) Did this charge result in a conviction? ______

c) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea? ______

d) Do you feel you were treated fairly? ______

64. Other than a traffic ticket, have any of your family members ever been arrested for, charged with, or convicted of a crime? ☐ YES ☑ NO

If YES:

a) What family member? ______

b) Describe the nature of the charge. ______

c) Did this charge result in a conviction? ______

d) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea? ______

e) Do you feel your family member was treated fairly? ______

65. Which best describes your total yearly household income?

☐ Under $25,000 ☐ $25 - $50,000 ☑ $50 - $100,000 ☐ $100 - $250,000 ☐ More than $250,000

66. Religious Preference: Christian - undenom

67. Are you angry about what happened with Enron? ☐ YES ☐ NO

If YES, please explain. dont Know enough
to answer - except
Know people were hurt
+ their future dollars/life effected

68. Of all the things you have seen, heard, or read about Enron, what stands out in your mind? ______
above

69. Do you, any family member, or friend know or have any connection with any of the defendants or their families in this case?

a) Kenneth Lay ☐ YES ☑ NO

b) Jeffrey Skilling ☐ YES ☑ NO

c) Richard Causey ☐ YES ☑ NO

If you have answered YES as to any of the defendants, please explain. ______

70. Do you have an opinion about any of the following people?

a) Kenneth Lay (former Chairman and Chief Executive Officer of Enron) ☐ YES ☑ NO

If YES, what is your opinion? ______

On what do you base your opinion? ______

b) **Jeffrey Skilling (former Chief Operating Officer, President, Chief Executive Officer of Enron)**

☐ YES ☑ NO

If YES, what is your opinion? ______

On what do you base your opinion? ______

c) **Richard Causey (former Chief Accounting Officer of Enron)** ☐ YES ☑ NO

If YES, what is your opinion? ______

On what do you base your opinion? ______

d) **Sherron Watkins (former employee of Enron)** ☐ YES ☑ NO

If YES, what is your opinion? ______

On what do you base your opinion? ______

71. **Based on anything you have heard, read, or been told do you have any opinion about the guilt or innocence of any of the following people:**

a) **Richard Causey** ☐ YES ☑ NO

b) **Jeffrey Skilling** ☐ YES ☑ NO

c) **Kenneth Lay** ☐ YES ☐ NO

**If you have answered YES as to any of these people, please explain.** ______

72. **The Judge in this case will instruct you that the indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.**

73. **Notwithstanding the instructions that the judge will give you at the trial, would any opinion you may have formed regarding Enron or any of the defendants prevent you from impartially considering the evidence presented during the trial of these three defendants?**

| | | | |
|---|---|---|---|
| **a) Kenneth Lay** | ☐ **YES** | ☑ **NO** | ☐ **UNSURE** |
| **b) Jeffrey Skilling** | ☐ **YES** | ☑ **NO** | ☐ **UNSURE** |
| **c) Richard Causey** | ☐ **YES** | ☑ **NO** | ☐ **UNSURE** |

**If YES or UNSURE as to any of these people, please explain.** ______________________

74. **Is there anything else you feel is important for the court to know about you?**
my husband has had a
stroke - can look after self
on a day to day basis

75. **Would you like to serve on this jury?** ☐ **YES** ☐ **NO** ☑ **DON'T KNOW**

**Please explain your answer.** I feel an obligation
to do my part -
the drive is right at 50 miles, But
lots of traffic going that way -
leaving too early in a.m -

Juror Number 064

76. Do you have a physical or other disability that would keep you from serving as a juror?

☑ YES ☒ NO If YES, please explain. As I have stated -- husbands situation & drive

77. This trial will begin on January 17, 2006, and may last as long as 6 months. You may rely upon the jury being in session Monday through Thursday from 8:30 am until 5:00 pm. The court will not be in session during federal holidays. A trial of this length is a hardship on virtually every juror. Would serving as a juror in this case cause such a severe hardship that it would affect your ability to be a fair and impartial juror? ☐ YES ☐ NO

If YES, please explain. only lack of sleep - and long drive. There's alot of responsibility at home, with husband not able to "pitch in" & help. Preparations to leave though possible, take lots of time & effort to leave so early & get back so late.

## OATH

I hereby swear or affirm that all of my answers in this questionnaire are true and correct to the best of my ability.

Nancy Thomas 11-06-05

Juror's Signature Date

Juror Number 084

# EXPLANATION SHEET

JUROR QUESTIONNAIRE

87
(For Official Use Only)

This form helps the court select a jury. Please answer all blanks *in print and in black ink.* If the question does not apply to you, please write "NA" in it. The lawyers are entitled to information about potential jurors, but if you choose not to answer a question for private reasons, please draw a single line through it.

| | | | |
|---|---|---|---|
| Name<br>Deborah P. Smith | Age<br>54 | Birth Place<br>Alabama USA | Religious Preference<br>BAPTIST |

| | | | | |
|---|---|---|---|---|
| City of Residence<br>HOUSTON | Years There<br>24 | Employer (ex if retired)<br>Schlumberger | Type of Work<br>Personnel | Years<br>24 |

| | | | | | |
|---|---|---|---|---|---|
| Children's Ages & Sex | M-31 | | | | Grown Children's Type of Work |
| | M-27 | | | | PIPEFITTER + RETAIL |

| | | |
|---|---|---|
| Marital Status<br>DIVORCED | Spouse's Name<br>N/A | Spouse's Birth Place<br>— |

| | | |
|---|---|---|
| Spouse's Employer<br>— | Type of Work<br>— | Years |

| | | | |
|---|---|---|---|
| List governments that you & relatives have worked for. List law enforcement but not the military | Who? | Governmental Unit | Type of Work |

| | | | |
|---|---|---|---|
| Have you served in the military? | Yes [✓ No] | Branch & Highest Rank | Years |

| School Level | School and City | Subject Studied | Degree |
|---|---|---|---|
| High School | Muscle Shoals High School | General/Business | Diploma |
| College | Houston Community College | Various Courses | |
| Post College | | | |

Do you have any Legal, Para-Legal, or Medical Training? Yes [✓ No]
If yes, describe

| | | | |
|---|---|---|---|
| Civil Suits | Have you sued or been sued? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes No | Case Type |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |
| Criminal Actions | Have you been charged criminally, other than a traffic ticket? | Yes [✓ No] | Case Type |
| | Have you made a criminal complaint? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes No | Case Type |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |

| | |
|---|---|
| List the magazines & newspapers you read. | Houston Chronicle, Newsweek, Reader's Digest |
| List the civic clubs, societies, unions, and political groups you ~~and your spouse~~ have joined | SLCPAAA |
| Do you have a physical, or other inability that would keep you from serving as a juror?<br>If yes, please describe | NO |

Juror Number 087

# INSTRUCTIONS TO JURORS

The attached questionnaire must be answered by you. The answers will assist the judge and lawyers in selecting a jury. Answer all the questions to the best of your ability. There are no right or wrong answers. To answer correctly you must answer honestly.

We need your help so that we can select a fair and impartial jury in this case. Only the judge and lawyers will know your name. Do not assume anything from these questions. The fact they are being asked does not necessarily have anything to do with the evidence that you will hear.

The judge and lawyers know that every person has beliefs and prejudices concerning many things. You should answer with your true feelings, whatever they may be. Do not assume that any of your answers will qualify you or disqualify you from serving on this jury.

Please fully answer each question to the best of your ability. Write or print clearly. You must not ask anyone for help. Do the best you can.

If you cannot answer a question because you do not understand it, write "Do Not Understand" in the margin next to the question. If you cannot answer because you do not know, write "Do Not Know" in the margin next to the question. If you want to explain your answer do so briefly in the margin next to the question. If for any reason you do not want to answer any of the questions asked, please write the word "PRIVATE" next to the question and we will take this matter up with you privately.

We are all certain that you understand the importance of juries to our American system of justice. We are confident that you will not try to avoid your duty as a citizen to serve if it is at all possible to do so. Without your help our courts cannot operate properly under the Constitution.

An Explanation Sheet is provided for you at the end of the questionnaire to answer questions more fully. Rather than leaving out information, please turn to the end and put your answers on the explanation sheet provided.

Because your answers are part of the jury selection process and become part of the records of this court, your answers must be truthful and under penalty of perjury.

# JUROR QUESTIONNAIRE

**Juror #:** 087

1. **Full Name:** Deborah P. Smith **Gender:** ☐ Male ☑ Female **Age:** 54
2. **What is your race?** Caucasian
3. **City of Residence:** Houston **Years There:** 24 **Birth Place:** Alabama USA
4. **What is your zip code?** [redacted] 77083
5. **Who is your employer and what is your job (if unemployed/retired, what and where was your last job)?**
   Schlumberger
   Personnel Admin
6. **For how many years have/did you worked there?** 24
7. **Describe your job duties or responsibilities:** Assistant to Worldwide Personnel Manager for Drilling & Measurements segment of Schlumberger. Includes International Transfers, New Hires, visa processing, HR support.
8. **What jobs have you held in the past?** Administrative, Internal Communications Manager (Editor worldwide Co. magazine), Proof Operator (Bank), UPS Clerk, Bookkeeper
9. **Have you ever been laid off from a job?** ☒ YES ☐ NO
   **If YES, how long ago?** @ 20 years
10. **Have you or your immediate family ever been affected by any type of layoff or downsizing?** ☒ YES ☐ NO
    **If YES, please explain:** Myself (above)
11. **Have you ever been responsible for hiring, firing, or supervising employees?** ☒ YES ☐ NO
12. **How far did you go in school [If college or post-college, name the school(s) and any degrees received]?**
    High School Diploma
    College (no degree obtained - yet)
13. **Current marital status:** Divorced **If married, for how long?** 16 yrs **How many times?** 1
14. **Spouse's Name:** N/A **Spouse's Birth Place:** N/A
15. **Who is your spouse/partner's employer and what is this person's job (if unemployed/retired, what and where was this person's last job)?** N/A

16. What jobs has this person held in the past? N/A

17. Please list the sex, age, and occupation for each of your children and step-children:
① Male, 31, pipefitter
② Male, 27, retail

18. List all governments and government agencies (do not include law enforcement or military) that you and your relatives have worked for and tell us who held this job, what governmental unit, and the type of work: Tennessee Valley Authority (TVA)
Father - construction, now retired
Brother - Engineer, now retired

19. Have you, any family members, or friends ever been employed by or applied for a job with any law enforcement agency? ☐ YES ■ NO

If YES:

a) Were you, your family member, or friend hired?

b) What job did you, your family member, or friend apply for and/or have?

c) When did you, your family member, or friend apply for and/or have this job?

d) Do you, your family member, or friend still hold this job today? ☐ YES ☐ NO

If NO, when and how did that employment end?

20. Have you or has anyone close to you ever had a negative experience dealing with law enforcement officers at the local or federal level (such as the police, FBI, INS, IRS, etc)? ☐ YES ■ NO

If YES, please describe:

If YES, what is your opinion toward that agency now?

21. Have you or has anyone close to you ever had a negative experience dealing with the United States government or any governmental agency? ☐ YES ■ NO

If YES, please describe:

If YES, what is your opinion toward that institution or agency now?

22. Have you or any family members ever owned your (their) own business? ☐ YES ■ NO

If YES, please tell us what type of business and is the business still open?

23. Have you ever worked for a large corporation? ☒ YES ☐ NO

If YES:

a) What corporation(s) did you work for and when? Schlumberger
1981 - still employed

b) Are (were) you satisfied with your work at the corporation? ☒ YES ☐ NO

c) Have you ever had a bad experience with a large corporation? ☐ YES ☒ NO

If YES, please explain.

24. What are your opinions about the compensation that executives of large corporations receive?
Some are not in line with the performance of the individual - too high!!

25. Have you had any education, training or experience in: accounting, bookkeeping, business, business management, finance, corporate finance, investment banking, law (criminal and/or civil), ethics, law enforcement, marketing, or stock trading? ☒ YES ☐ NO

If YES, please describe your education training or experience: Accounting/Bookkeeping: training classes - also work in jobs in this area.
Law Enforcement: Training with Police/Volunteer Organization at City, State, Region levels. (Texas)

26. Do you know anyone who works for the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☒ YES ☐ NO

If YES, whom do you know and what is the nature of your relationship with that person?
Ft Bend County DA - John Healey

27. Have you ever had any dealings with any person in the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☒ YES ☐ NO

If YES, describe the nature of those dealings and when they occurred.
DA + FBI - training sessions via volunteer Org - Sugar Land Citizens Police Academy Alumni Association (SLCPAAA)

28. Do you know (on a personal, professional, or casual basis) any attorneys or judges? ☒ YES ☐ NO

If YES:

a) Please identify whom you know and what his or her job is. Houston Attorney : Kenneth Langer

b) How do you know this person (these people)? FELLOW MEMBER OF SLCPAAA

c) What is the nature of your relationship with this person (these people)? FRIEND & Co-Volunteer

29. Have you ever sued or been sued? ☐ YES ☒ NO

If YES, please tell us if you were the plaintiff (the party suing) or the defendant (the party being sued), the type of case, and the outcome:

30. Have you served as a juror for a:

a) ☐ Criminal case ___ times ☐ Civil case ___ times ☐ Grand Jury ___ times ☒ Never served

b) What type(s) of criminal case(s)?

c) What was the verdict(s)? _____

d) Were you ever the foreperson? ☐ YES ☐ NO

e) What did you like or dislike about serving on a jury?

31. Have you ever filed a criminal complaint or appeared as a witness in any criminal case? ☐ YES ☒ NO

If YES, please explain (including the nature of the case, and whether you appeared as a witness for the prosecution or for the defense).

32. Have you, any family members, or friends ever worked for the Arthur Andersen accounting firm?

☐ YES ☒ NO

If YES:

a) Who worked for Arthur Andersen?

b) When and where did they work for Arthur Andersen?

c) Describe the nature of their work for Arthur Andersen.

33. Have you, any family members, or friends ever worked for or applied for work with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES:

**a) Who worked for or applied for work with Enron or its subsidiaries?**

**b) Were you or any family members or friends hired by Enron or its subsidiaries?**

**c) When did you or any family members or friends hold/apply for this job?**

**d) When and how did this employment terminate?**

**34. Have you, any family members, or friends ever done business with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO**

**If YES, please describe the nature of that business, when it occurred, and who was involved.**

**35. Have you, any family members, or friends ever owned stock in Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☑ NO**

**If YES:**

**a) Approximately how many shares did you, your family member, or friend own?**

**b) When did you, your family member, or friend purchase the shares?**

**c) Did you, your family member, or friend ever sell the shares? If so, please identify when you sold, for what reason, and whether you made or lost money on the sale.**

**36. Do you know anyone who lost their job or lost money in an investment, an IRA, 401K, or other retirement plan as a result of the bankruptcy of Enron? ☐ YES ☑ NO**

**If YES, please explain.**

**37. Have you, any family members, or friends ever been employed by a company that has been affected by the Enron bankruptcy or the layoffs of Enron employees? ☐ YES ☑ NO**

**If YES, please explain.**

38. **Do you know anyone, whom you have not mentioned above, who has been negatively affected or hurt in any way by what happened at Enron?** ☐ YES ■ NO

**If YES, please tell us the name of the person and how they were affected.**

39. **Do you have an opinion about the cause of the collapse of Enron?** ■ YES ☐ NO

**a) If YES, what is your opinion?**

Poor Management + bad judgement - Greed.

**b) On what do you base your opinion?**

The current state of the Company - and the former employees/shareholders.

40. **What do you think about the U.S. Government's investigation into the collapse of Enron?**

The investigation is necessary to get to the truth.

41. **Have you heard or read about any of the Enron cases?** ■ YES ☐ NO

**If YES, please tell us the name of all sources from which you have heard or read about the Enron cases (such as the Houston Chronicle, Time Magazine, Channel 13 news, O'Reilly Factor, Rush Limbaugh radio show, talking with friends, family or co-workers, Internet news sources, blogs, etc.)?**

42. Have you read any books or seen any movies about Enron? ☐ YES ☒ NO

If YES, please describe the book(s) or movie(s) and tell us what you thought of that book or movie:

43. Have you, your business, any family member, or your employer ever filed for bankruptcy?

☐ YES ☒ NO If YES, please tell us who filed and what happened.

44. Who makes the financial decisions in your household? I do.

45. Do you currently, or have you ever, owned stocks (including mutual funds)? ☒ YES ☐ NO

46. Have you or your spouse lost a significant amount of money in the stock market in the past ten (10) years? ☐ YES ☒ NO If YES, please explain what happened.

47. Which of the following words would describe you? Please check (✓) all that apply:

☐ Assertive ☒ Analytical ☒ Business-minded ☐ Cautious ☐ Compulsive
☐ Creative ☐ Decisive ☒ Detailed ☒ Dedicated ☐ Entrepreneur
☐ Impulsive ☐ Innovative ☐ Judgmental ☒ Law & Order ☐ Leader
☒ Logical ☒ Loyal ☐ Opinionated ☐ Outspoken ☒ Practical
☒ Private ☒ Problem solver ☐ Pro-business ☐ Pro-worker ☐ Pro-Government
☒ Religious ☐ Skeptical ☐ Snap-decisions ☐ Strict ☐ Technical
☐ Thoughtful ☐ Trusting ☐ Visual ☐ Other:

48. Please list (3) people that you admire the *most*:

(1) Edwin Parks Jr.
(2) Olivia Hell
(3) Billy Graham / Martin Luther King

49. Please list (3) people that you admire the *least*:

(1) Madelyn Murray O'Hair
(2) Jesse Jackson, Malcolm X, Quannel X (all the same) white supremists
(3) Saddam Hussein / Osama Bin Laden ( " " " )

50. What do you enjoy doing in your spare time? Reading, Socializing with friends, Community volunteer projects, Traveling.

51. Please list your (3) favorite television shows:

(1) Criminal Minds

(2) CSI

(3) Desperate Housewives

52. What courtroom or law-related television shows do you watch? CSI BONES Close To Home Criminal Minds Cold Case.

53. What sites on the Internet do you regularly visit? News & Research sites

54. What newspapers, magazines, or trade publications do you read?

Houston Chronicle.

Newsweek

Reader's Digest

55. Which financial newspapers or magazines (such as the *Wall Street Journal*, *Business Week*, *Barrons*, *Economist*, *Forbes*, *Fortune*, *Money Magazine*, etc.), if any, do you read, and what financial programs, if any, do you watch on television? None

56. Which *one* source do you get *most* of your news from? Television

57. Please list all unions or civic, social, political, professional, and religious groups or organizations to which you or your spouse/partner belong:

Sugar Land Citizens Police Academy Alumni Association (SLCPAAA)

58. Have you held leadership roles in any of these organizations? ☒ YES ☐ NO

If YES, what was the role? Director/Chairman of Board, Treasurer

59. Please tell us about any volunteer work you do (now or past): SLCPAAA, Junior Achievement, American Heart Association (E. Ft Bend County Walk Coordinator - 2 years)

60. On social issues, are you: ☐ Very conservative ☐ Conservative ☒ Moderate ☐ Liberal ☐ Very liberal

61. On economic issues are you: ☐ Very conservative ☒ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

62. Political party preference: ☒ Democrat ☐ Independent ☐ Republican ☐ Other:

63. Other than a traffic ticket, have you ever been arrested for, charged with, or convicted of a crime?

☐ YES ☒ NO

If YES:

a) Describe the nature of the charge.

b) Did this charge result in a conviction?

c) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?

d) Do you feel you were treated fairly? ________________________

64. Other than a traffic ticket, have any of your family members ever been arrested for, charged with, or convicted of a crime? ☐ YES ☒ NO

If YES:

a) What family member? ________________________

b) Describe the nature of the charge. ________________________

c) Did this charge result in a conviction? ________________________

d) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea? ________

e) Do you feel your family member was treated fairly? ________________________

65. Which best describes your total yearly household income?

☐ Under $25,000 ☐ $25 - $50,000 ☒ $50 - $100,000 ☐ $100 - $250,000 ☐ More than $250,000

66. Religious Preference: BAPTIST

67. Are you angry about what happened with Enron? ☐ YES ☒ NO

If YES, please explain. ________________________

68. Of all the things you have seen, heard, or read about Enron, what stands out in your mind?

The sad state of the long-term loyal employees who are left with nothing in their retirement accounts, pensions, etc.

69. Do you, any family member, or friend know or have any connection with any of the defendants or their families in this case?

a) Kenneth Lay ☐ YES ☒ NO

b) Jeffrey Skilling ☐ YES ☒ NO

c) Richard Causey ☐ YES ☒ NO

If you have answered YES as to any of the defendants, please explain. ________________________

70. Do you have an opinion about any of the following people?

a) Kenneth Lay (former Chairman and Chief Executive Officer of Enron) ☐ YES ☒ NO

**If YES, what is your opinion?**

**On what do you base your opinion?**

b) **Jeffrey Skilling (former Chief Operating Officer, President, Chief Executive Officer of Enron)**

☐ YES ■ NO

**If YES, what is your opinion?**

**On what do you base your opinion?**

c) **Richard Causey (former Chief Accounting Officer of Enron)** ☐ YES ■ NO

**If YES, what is your opinion?**

**On what do you base your opinion?**

d) **Sherron Watkins (former employee of Enron)** ■ YES ☐ NO

**If YES, what is your opinion?** I admire her bravery for bringing the situation to the attention of the public. which stopped things from getting worse.

**On what do you base your opinion?** If not for her, more damage would have been done.

71. **Based on anything you have heard, read, or been told do you have any opinion about the guilt or innocence of any of the following people:**

a) **Richard Causey** ☐ YES ■ NO

b) **Jeffrey Skilling** ☐ YES ■ NO

c) **Kenneth Lay** ☐ YES ■ NO

**If you have answered YES as to any of these people, please explain.**

72. The Judge in this case will instruct you that the indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

73. Notwithstanding the instructions that the judge will give you at the trial, would any opinion you may have formed regarding Enron or any of the defendants prevent you from impartially considering the evidence presented during the trial of these three defendants?

| | |
|---|---|
| a) Kenneth Lay | ☐ YES ■ NO ☐ UNSURE |
| b) Jeffrey Skilling | ☐ YES ■ NO ☐ UNSURE |
| c) Richard Causey | ☐ YES ■ NO ☐ UNSURE |

If YES or UNSURE as to any of these people, please explain. ______

74. Is there anything else you feel is important for the court to know about you? ______

75. Would you like to serve on this jury? ☐ YES ■ NO ☐ DON'T KNOW

Please explain your answer.

Because it will probably be a long tedious trial.

76. **Do you have a physical or other disability that would keep you from serving as a juror?**

**☐ YES ☒ NO If YES, please explain.** ______________________________

77. **This trial will begin on January 17, 2006, and may last as long as 6 months. You may rely upon the jury being in session Monday through Thursday from 8:30 am until 5:00 pm. The court will not be in session during federal holidays. A trial of this length is a hardship on virtually every juror. Would serving as a juror in this case cause such a severe hardship that it would affect your ability to be a fair and impartial juror? ☐ YES ☒ NO**

**If YES, please explain.** ______________________________

## *OATH*

**I hereby swear or affirm that all of my answers in this questionnaire are true and correct to the best of my ability.**

Deborah L. Smith
**Juror's Signature**

12-Nov-2005
**Date**

Juror Number 087

# EXPLANATION SHEET

JUROR QUESTIONNAIRE

90
(For Official Use Only)

This form helps the court select a jury. Please answer all blanks *in print and in black ink.* If the question does not apply to you, please write "NA" in it. The lawyers are entitled to information about potential jurors, but if you choose not to answer a question for private reasons, please draw a single line through it.

| | | | |
|---|---|---|---|
| Name<br>DAlE A. Switalski | Age<br>42 | Birth Place<br>FLINT mi. | Religious Preference<br>Catholic |

| | | | | |
|---|---|---|---|---|
| City of Residence<br>PORTER Tx. | Years There<br>20 | Employer (ex if retired)<br>OAK FARm's | Type of Work<br>Production | Years<br>19 |

| | | | | | |
|---|---|---|---|---|---|
| Children's Ages & Sex | MALE 13 | | | | Grown Children's Type of Work |
| | FEMALE 10 | | | | |

| | | |
|---|---|---|
| Marital Status<br>MARRied | Spouse's Name<br>TONYA M. Switalski | Spouse's Birth Place<br>Genessee mi. |

| | | |
|---|---|---|
| Spouse's Employer<br>Colorado lining | Type of Work<br>GENERAl MANAGER | Years<br>5 |

| | | | |
|---|---|---|---|
| List governments that you & relatives have worked for. List law enforcement but not the military. | Who? | Governmental Unit | Type of Work |

| | | | |
|---|---|---|---|
| Have you served in the military? | Yes [✓ No] | Branch & Highest Rank | Years |

| School Level | School and City | Subject Studied | Degree |
|---|---|---|---|
| High School | MT. Morris High | HS. | Diploma |
| College | | | |
| Post College | | | |

Do you have any Legal, Para-Legal, or Medical Training? Yes [✓ No]
If yes, describe

| | | | |
|---|---|---|---|
| Civil Suits | Have you sued or been sued? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes No | Case Type |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |
| Criminal Actions | Have you been charged criminally, other than a traffic ticket? | Yes [✓ No] | Case Type |
| | Have you made a criminal complaint? | Yes [✓ No] | Case Type |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes No | Case Type |
| | Have you been a witness in court? | Yes [✓ No] | Case Type |

| | |
|---|---|
| List the magazines & newspapers you read. | Hot Rod, Good Sam Highway's, local PAPER |
| List the civic clubs, societies, unions, and political groups you and your spouse have joined | LINDSAY foundation |
| Do you have a physical, or other inability that would keep you from serving as a juror? If yes, please describe | No |

# INSTRUCTIONS TO JURORS

The attached questionnaire must be answered by you. The answers will assist the judge and lawyers in selecting a jury. Answer all the questions to the best of your ability. There are no right or wrong answers. To answer correctly you must answer honestly.

We need your help so that we can select a fair and impartial jury in this case. Only the judge and lawyers will know your name. Do not assume anything from these questions. The fact they are being asked does not necessarily have anything to do with the evidence that you will hear.

The judge and lawyers know that every person has beliefs and prejudices concerning many things. You should answer with your true feelings, whatever they may be. Do not assume that any of your answers will qualify you or disqualify you from serving on this jury.

Please fully answer each question to the best of your ability. Write or print clearly. You must not ask anyone for help. Do the best you can.

If you cannot answer a question because you do not understand it, write "Do Not Understand" in the margin next to the question. If you cannot answer because you do not know, write "Do Not Know" in the margin next to the question. If you want to explain your answer do so briefly in the margin next to the question. If for any reason you do not want to answer any of the questions asked, please write the word "PRIVATE" next to the question and we will take this matter up with you privately.

We are all certain that you understand the importance of juries to our American system of justice. We are confident that you will not try to avoid your duty as a citizen to serve if it is at all possible to do so. Without your help our courts cannot operate properly under the Constitution.

An Explanation Sheet is provided for you at the end of the questionnaire to answer questions more fully. Rather than leaving out information, please turn to the end and put your answers on the explanation sheet provided.

Because your answers are part of the jury selection process and become part of the records of this court, your answers must be truthful and under penalty of perjury.

# JUROR QUESTIONNAIRE

**Juror #:** 090

1. Full Name: Dale A. Switalski Gender: ☒ Male ☐ Female Age: 42
2. What is your race? White
3. City of Residence: Porter Years There: 19 Birth Place: Flint mi.
4. What is your zip code? 77365
5. Who is your employer and what is your job (If unemployed/retired, what and where was your last job)?
Oak Farm's Dairy. Im a Production Supervisor on the Night Shift. my hour's ARE 1am to 9am.
6. *For how many years have/did you worked there? IN MARCH 2006 it will BE 19yrs
7. Describe your job duties or responsibilities: I Supervise A crew of 25 or 30 personal. my job is to make out the days production & clean All Equipment & Start the days Production. I cordinate the Plant.
8. What jobs have you held in the past? -worked in Department Store in the 80's. worked At Allied Rental in 86. I work At Oak Farm's Starting march of 87.
9. Have you ever been laid off from a job? ☐ YES ☒ NO
If YES, how long ago?
10. Have you or your immediate family ever been affected by any type of layoff or downsizing?
☐ YES ☒ NO
If YES, please explain: Do not know
11. Have you ever been responsible for hiring, firing, or supervising employees? ☒ YES ☐ NO
12. How far did you go in school [If college or post-college, name the school(s) and any degrees received]?
Mt Morris high School, Deploma
13. Current marital status: yes If married, for how long? 16yrs How many times? 1
14. Spouse's Name: Tonya M. Switalski Spouse's Birth Place: Genesee. Mi
15. Who is your spouse/partner's employer and what is this person's job (If unemployed/retired, what and where was this person's last job)? Colorado lining General manager. last Job was GSE as CSR

16. What jobs has this person held in the past? ARBy's

17. Please list the sex, age, and occupation for each of your children and step-children:

mAlE, Chris A Switalski, JR. High School, 13 yEArs old
FEmAlE, Danielle m Switalski, middLE School, 10 yEArs old

18. List all governments and government agencies (do not include law enforcement or military) that you and your relatives have worked for and tell us who held this job, what governmental unit, and the type of work: Do Not Know

19. Have you, any family members, or friends ever been employed by or applied for a job with any law enforcement agency? ☐ YES ☒ NO

If YES:

a) Were you, your family member, or friend hired?

b) What job did you, your family member, or friend apply for and/or have?

c) When did you, your family member, or friend apply for and/or have this job?

d) Do you, your family member, or friend still hold this job today? ☐ YES ☐ NO

If NO, when and how did that employment end?

20. Have you or has anyone close to you ever had a negative experience dealing with law enforcement officers at the local or federal level (such as the police, FBI, INS, IRS, etc)? ☐ YES ☒ NO

If YES, please describe:

If YES, what is your opinion toward that agency now?

21. Have you or has anyone close to you ever had a negative experience dealing with the United States government or any governmental agency? ☐ YES ☐ NO

If YES, please describe: Do Not Know

If YES, what is your opinion toward that institution or agency now?

22. Have you or any family members ever owned your (their) own business? ☐ YES ☒ NO

If YES, please tell us what type of business and is the business still open? ____

23. Have you ever worked for a large corporation? ☒ YES ☐ NO

If YES:

a) What corporation(s) did you work for and when? DEAN'S Foods, 1987 to Now

b) Are (were) you satisfied with your work at the corporation? ☒ YES. ☐ NO

c) Have you ever had a bad experience with a large corporation? ☐ YES ☒ NO

If YES, please explain. ____

24. What are your opinions about the compensation that executives of large corporations receive?

I Believe they live large & have a lot of Responsibility. to many People.

25. Have you had any education, training or experience in: accounting, bookkeeping, business, business management, finance, corporate finance, investment banking, law (criminal and/or civil), ethics, law enforcement, marketing, or stock trading? ☐ YES ☒ NO

If YES, please describe your education training or experience: ____

26. Do you know anyone who works for the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☒ NO

If YES, whom do you know and what is the nature of your relationship with that person? ____

27. Have you ever had any dealings with any person in the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☒ NO

If YES, describe the nature of those dealings and when they occurred. ____

28. Do you know (on a personal, professional, or casual basis) any attorneys or judges? ☐ YES ☒ NO

If YES:

a) Please identify whom you know and what his or her job is. ______________________________

b) How do you know this person (these people)? ______________________________

c) What is the nature of your relationship with this person (these people)? ______________________________

29. Have you ever sued or been sued? ☐ YES ☒ NO

If YES, please tell us if you were the plaintiff (the party suing) or the defendant (the party being sued), the type of case, and the outcome: ______________________________

30. Have you served as a juror for a:

a) ☐ Criminal case ___ times ☐ Civil case ___ times ☐ Grand Jury ___ times ☒ Never served

b) What type(s) of criminal case(s)? ______________________________

c) What was the verdict(s)? _____

d) Were you ever the foreperson? ☐ YES ☐ NO

e) What did you like or dislike about serving on a jury? ______________________________

31. Have you ever filed a criminal complaint or appeared as a witness in any criminal case? ☐ YES ☒ NO

If YES, please explain (including the nature of the case, and whether you appeared as a witness for the prosecution or for the defense). ______________________________

32. Have you, any family members, or friends ever worked for the Arthur Andersen accounting firm?

☐ YES ☒ NO

If YES:

a) Who worked for Arthur Andersen? ______________________________

b) When and where did they work for Arthur Andersen? ______________________________

c) Describe the nature of their work for Arthur Andersen. ______________________________

33. Have you, any family members, or friends ever worked for or applied for work with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES:

a) Who worked for or applied for work with Enron or its subsidiaries?

b) Were you or any family members or friends hired by Enron or its subsidiaries?

c) When did you or any family members or friends hold/apply for this job?

d) When and how did this employment terminate?

34. Have you, any family members, or friends ever done business with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES, please describe the nature of that business, when it occurred, and who was involved.

Do Not Know

35. Have you, any family members, or friends ever owned stock in Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES:

a) Approximately how many shares did you, your family member, or friend own?

b) When did you, your family member, or friend purchase the shares?

c) Did you, your family member, or friend ever sell the shares? If so, please identify when you sold, for what reason, and whether you made or lost money on the sale.

36. Do you know anyone who lost their job or lost money in an investment, an IRA, 401K, or other retirement plan as a result of the bankruptcy of Enron? ☐ YES ☒ NO

If YES, please explain.

37. Have you, any family members, or friends ever been employed by a company that has been affected by the Enron bankruptcy or the layoffs of Enron employees? ☐ YES ☒ NO

If YES, please explain.

38. Do you know anyone, whom you have not mentioned above, who has been negatively affected or hurt in any way by what happened at Enron? ☐ YES ☒ NO

If YES, please tell us the name of the person and how they were affected.

39. Do you have an opinion about the cause of the collapse of Enron? ☒ YES ☐ NO

a) If YES, what is your opinion? The Small Average worker Save's money for Retirement All his life. It's not Right for some one or Any one to take or try to take this part of his life Away from him.

b) On what do you base your opinion? I Base this opinion on what I heard from co-worker's & wife & the News. But I don't understand exactally what hapeed & how many People were Involed.

40. What do you think about the U.S. Government's investigation into the collapse of Enron?

I think this is a good thing

41. Have you heard or read about any of the Enron cases? ☒ YES ☐ NO

If YES, please tell us the name of all sources from which you have heard or read about the Enron cases (such as the Houston Chronicle, Time Magazine, Channel 13 news, O'Reilly Factor, Rush Limbaugh radio show, talking with friends, family or co-workers, internet news sources, blogs, etc.)?

I talked very little to co-worker's & wife About this case. my Source's Are mainly from wife, co-worker's & T.V.

42. Have you read any books or seen any movies about Enron? ☐ YES ☒ NO

If YES, please describe the book(s) or movie(s) and tell us what you thought of that book or movie: ___

43. Have you, your business, any family member, or your employer ever filed for bankruptcy?

☐ YES ☐ NO If YES, please tell us who filed and what happened.

Do Not Know

44. Who makes the financial decisions in your household? my wife & I

45. Do you currently, or have you ever, owned stocks (including mutual funds)? ☒ YES ☐ NO

46. Have you or your spouse lost a significant amount of money in the stock market in the past ten (10) years? ☐ YES ☒ NO If YES, please explain what happened.

47. Which of the following words would describe you? Please check (✓) all that apply:

☐ Assertive ☐ Analytical ☐ Business-minded ☑ Cautious ☐ Compulsive
☐ Creative ☐ Decisive ☐ Detailed ☑ Dedicated ☐ Entrepreneur
☐ Impulsive ☐ Innovative ☐ Judgmental ☐ Law & Order ☐ Leader
☐ Logical ☑ Loyal ☐ Opinionated ☐ Outspoken ☐ Practical
☑ Private ☐ Problem solver ☐ Pro-business ☐ Pro-worker ☐ Pro-Government
☐ Religious ☐ Skeptical ☐ Snap-decisions ☐ Strict ☐ Technical
☑ Thoughtful ☑ Trusting ☐ Visual ☐ Other: ________

48. Please list (3) people that you admire the *most*:

(1) my DAD, Don Switalski
(2) my Wife, Terry Switalski
(3)

49. Please list (3) people that you admire the *least*:

(1) Do Not know
(2) "
(3) "

50. What do you enjoy doing in your spare time? working on Fixing things, Boating Fishing, Golfing, Bowling, Building things, camping, motorcycle Riding.

51. Please list your (3) favorite television shows:

(1) American Idol

(2) Judge Judy

(3) The Simpsons

52. What courtroom or law-related television shows do you watch? Judge Judy, Judge Mathis, Judge Joe Brown.

53. What sites on the Internet do you regularly visit? E-Bay

54. What newspapers, magazines, or trade publications do you read? Hot Rod & local Paper East Montgomery County OBSERVER AND Good Sam Highways magazine

55. Which financial newspapers or magazines (such as the *Wall Street Journal*, *Business Week*, *Barrons*, *Economist*, *Forbes*, *Fortune*, *Money Magazine*, etc.), if any, do you read, and what financial programs, if any, do you watch on television? NONE

56. Which *one* source do you get *most* of your news from? T.V. or wife

57. Please list all unions or civic, social, political, professional, and religious groups or organizations to which you or your spouse/partner belong: Lindsay foundation

58. Have you held leadership roles in any of these organizations? ☐ YES ☒ NO

If YES, what was the role? ______

59. Please tell us about any volunteer work you do (now or past): I haved helped in the lindsey foundation at the Golf tournment.

60. On social issues, are you: ☐ Very conservative ☒ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

61. On economic issues are you: ☐ Very conservative ☒ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

62. Political party preference: ☐ Democrat ☐ Independent ☒ Republican ☐ Other: ______

63. Other than a traffic ticket, have you ever been arrested for, charged with, or convicted of a crime?

☐ YES ☒ NO

If YES:

a) Describe the nature of the charge. ______

b) Did this charge result in a conviction? ______

c) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea? ______

d) Do you feel you were treated fairly?

64. Other than a traffic ticket, have any of your family members ever been arrested for, charged with, or convicted of a crime? ☐ YES ☒ NO

If YES:

a) What family member? Do Not Know

b) Describe the nature of the charge.

c) Did this charge result in a conviction?

d) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?

e) Do you feel your family member was treated fairly?

65. Which best describes your total yearly household income? PRIVATE

☐ Under $25,000 ☐ $25 - $50,000 ☐ $50 - $100,000 ☐ $100 - $250,000 ☐ More than $250,000

66. Religious Preference: CAtholic

67. Are you angry about what happened with Enron? ☐ YES ☒ NO

If YES, please explain.

68. Of all the things you have seen, heard, or read about Enron, what stands out in your mind?

I Don't Know what kind of Scam oR fraud or really what happened IN Detail. I Just Know a lot of people lost money & their Job's.

69. Do you, any family member, or friend know or have any connection with any of the defendants or their families in this case?

a) Kenneth Lay ☐ YES ☒ NO

b) Jeffrey Skilling ☐ YES ☒ NO

c) Richard Causey ☐ YES ☒ NO

If you have answered YES as to any of the defendants, please explain.

70. Do you have an opinion about any of the following people?

a) Kenneth Lay (former Chairman and Chief Executive Officer of Enron) ☐ YES ☒ NO

**If YES, what is your opinion?** ______________________

______________________

______________________

______________________

**On what do you base your opinion?** ______________________

______________________

**b) Jeffrey Skilling (former Chief Operating Officer, President, Chief Executive Officer of Enron)**

☐ **YES** ☒ **NO**

**If YES, what is your opinion?** ______________________

______________________

______________________

______________________

**On what do you base your opinion?** ______________________

______________________

**c) Richard Causey (former Chief Accounting Officer of Enron)** ☐ YES ☒ NO

**If YES, what is your opinion?** ______________________

______________________

______________________

______________________

**On what do you base your opinion?** ______________________

______________________

**d) Sherron Watkins** *(former employee of Enron)* ☐ YES ☒ NO

**If YES, what is your opinion?** ______________________

______________________

______________________

______________________

**On what do you base your opinion?** ______________________

______________________

71. **Based on anything you have heard, read, or been told do you have any opinion about the guilt or innocence of any of the following people:**

| | | |
|---|---|---|
| a) | **Richard Causey** | ☐ YES ☒ NO |
| b) | **Jeffrey Skilling** | ☐ YES ☒ NO |
| c) | **Kenneth Lay** | ☐ YES ☒ NO |

**If you have answered YES as to any of these people, please explain.** ______________________

______________________

______________________

72. **The Judge in this case will instruct you that the indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.**

73. **Notwithstanding the instructions that the judge will give you at the trial, would any opinion you may have formed regarding Enron or any of the defendants prevent you from impartially considering the evidence presented during the trial of these three defendants?**

| | | | |
|---|---|---|---|
| **a) Kenneth Lay** | ☐ **YES** | ☒ **NO** | ☐ **UNSURE** |
| **b) Jeffrey Skilling** | ☐ **YES** | ☒ **NO** | ☐ **UNSURE** |
| **c) Richard Causey** | ☐ **YES** | ☒ **NO** | ☐ **UNSURE** |

**If YES or UNSURE as to any of these people, please explain.** ____________________

74. **Is there anything else you feel is important for the court to know about you?** ____________________

75. **Would you like to serve on this jury?** ☐ **YES** ☐ **NO** ☒ **DON'T KNOW**

**Please explain your answer.** It would be A Interesting Trial and I Never Experienced Any Trial in Person.

76. **Do you have a physical or other disability that would keep you from serving as a juror?**

**☐ YES ☒ NO If YES, please explain.**

77. **This trial will begin on January-17, 2006, and may last as long as 6 months. You may rely upon the jury being in session Monday through Thursday from 8:30 am until 5:00 pm. The court will not be in session during federal holidays. A trial of this length is a hardship on virtually every juror. Would serving as a juror in this case cause such a severe hardship that it would affect your ability to be a fair and impartial juror? ☐ YES ☒ NO**

**If YES, please explain.**

## *OATH*

I hereby swear or affirm that all of my answers in this questionnaire are true and correct to the best of my ability.

11-14-05

**Juror's Signature** **Date**

Juror Number 090

# EXPLANATION SHEET

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(For Official Use Only)

# JUROR QUESTIONNAIRE

This form helps the court select a jury. *Please answer all blanks in print and in black ink.* If the question does not apply to you, please write "NA" in it. The lawyers are entitled to information about potential jurors, but if you choose not to answer a question for private reasons, please draw a single line through it.

| | | | |
|---|---|---|---|
| Name<br>Amanda Michele Perry | Age<br>22 | Birth Place<br>Houston | Religious Preference<br>none |

| | | | | |
|---|---|---|---|---|
| City of Residence<br>baytown | Years There<br>22 | Employer (or if retired)<br>Dr. Leahey | Type of Work<br>Medical Assistant | Years<br>4 mon. |

Children's Ages & Sex: son 3 Joshua 5 y ago

Grown Children's Type of Work:

Marital Status: Single

Spouse's Name:

Spouse's Birth Place:

Spouse's Employer:

Type of Work:

Years:

List governments that you & relatives have worked for. List law enforcement but not the military

Who? none

Governmental Unit:

Type of Work:

Have you served in the military? Yes No

Branch & Highest Rank:

Years:

| [illegible] | [illegible] | [illegible] | [illegible] |
|---|---|---|---|
| High School | Ross S. Sterling baytown | basics | yes |
| College | National Institute of Technology Houston TX | medical Assisting | yes |
| Post College | | | |

Do you have any Legal, Para-Legal, or Medical Training? [✓ Yes] No

If yes, describe: medical Assistant

| | | |
|---|---|---|
| Have you sued or been sued? | Yes [✓ No] | Case Type |
| Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes No | Case Type |
| Have you been a witness in court? | Yes No | Case Type |
| Have you been charged criminally, other than a traffic ticket? | [✓ Yes] No | Case Type misdeamenor theft |
| Have you made a criminal complaint? | Yes [✓ No] | Case Type |
| Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes No | Case Type |
| Have you been a witness in court? | Yes [✓ No] | Case Type |

List the magazines & newspapers you read. Baytown Sun

List the civic clubs, societies, unions, and political groups you and your spouse have joined. none

Do you have a physical, or other inability that would keep you from serving as a juror? If yes, please describe. no

Juror Number 099

# INSTRUCTIONS TO JURORS

The attached questionnaire must be answered by you. The answers will assist the judge and lawyers in selecting a jury. Answer all the questions to the best of your ability. There are no right or wrong answers. To answer correctly you must answer honestly.

We need your help so that we can select a fair and impartial jury in this case. Only the judge and lawyers will know your name. Do not assume anything from these questions. The fact they are being asked does not necessarily have anything to do with the evidence that you will hear.

The judge and lawyers know that every person has beliefs and prejudices concerning many things. You should answer with your true feelings, whatever they may be. Do not assume that any of your answers will qualify you or disqualify you from serving on this jury.

Please fully answer each question to the best of your ability. Write or print clearly. You must not ask anyone for help. Do the best you can.

If you cannot answer a question because you do not understand it, write "Do Not Understand" in the margin next to the question. If you cannot answer because you do not know, write "Do Not Know" in the margin next to the question. If you want to explain your answer do so briefly in the margin next to the question. If for any reason you do not want to answer any of the questions asked, please write the word "PRIVATE" next to the question and we will take this matter up with you privately.

We are all certain that you understand the importance of juries to our American system of justice. We are confident that you will not try to avoid your duty as a citizen to serve if it is at all possible to do so. Without your help our courts cannot operate properly under the Constitution.

An Explanation Sheet is provided for you at the end of the questionnaire to answer questions more fully. Rather than leaving out information, please turn to the end and put your answers on the explanation sheet provided.

Because your answers are part of the jury selection process and become part of the records of this court, your answers must be truthful and under penalty of perjury.

# JUROR QUESTIONNAIRE

**Juror #:** 099

1. **Full Name:** Amanda Michele Perry **Gender:** ☐ **Male** ☑ **Female** **Age:** 22
2. **What is your race?** White
3. **City of Residence:** Baytown **Years There:** 22 **Birth Place:** Houston
4. **What is your zip code?** 77521
5. **Who is your employer and what is your job (If unemployed/retired, what and where was your last job)?** Dr. Edward W Leneay - medical assistant
6. **For how many years have/did you worked there?** 4 mon.
7. **Describe your job duties or responsibilities:** take patient vital signs, administer EKGs - do pt checks
8. **What jobs have you held in the past?** receptionist, medical assistant
9. **Have you ever been laid off from a job?** ☑ **YES** ☐ **NO**
   **If YES, how long ago?** 4 mon. ago
10. **Have you or your immediate family ever been affected by any type of layoff or downsizing?**
    ☐ **YES** ☑ **NO**
    **If YES, please explain:**
11. **Have you ever been responsible for hiring, firing, or supervising employees?** ☐ **YES** ☑ **NO**
12. **How far did you go in school [If college or post-college, name the school(s) and any degrees received]?** graduated high school completed one year medical assistant degree - National Institute of Technology - Houston TX
13. **Current marital status:** Single **If married, for how long?** ____ **How many times?** ____
14. **Spouse's Name:** ____ **Spouse's Birth Place:** ____
15. **Who is your spouse/partner's employer and what is this person's job (If unemployed/retired, what and where was this person's last job)?**

16. What jobs has this person held in the past?

17. Please list the sex, age, and occupation for each of your children and step-children:
Male - 3

18. List all governments and government agencies (do not include law enforcement or military) that you and your relatives have worked for and tell us who held this job, what governmental unit, and the type work:

19. Have you, any family members, or friends ever been employed by or applied for a job with any law enforcement agency? ☐ YES ☒ NO

If YES:

a) Were you, your family member, or friend hired?

b) What job did you, your family member, or friend apply for and/or have?

c) When did you, your family member, or friend apply for and/or have this job?

d) Do you, your family member, or friend still hold this job today? ☐ YES ☐ NO

If NO, when and how did that employment end?

20. Have you or has anyone close to you ever had a negative experience dealing with law enforcement officers at the local or federal level (such as the police, FBI, INS, IRS, etc)? ☒ YES ☐ NO

If YES, please describe: I was arrested for a misdeamenor charge of theft.

If YES, what is your opinion toward that agency now? I just feel like they did their job and I respect them for it

21. Have you or has anyone close to you ever had a negative experience dealing with the United States government or any governmental agency? ☐ YES ☒ NO

If YES, please describe:

If YES, what is your opinion toward that institution or agency now?

22. Have you or any family members ever owned your (their) own business? ☐ YES ☒ NO

If YES, please tell us what type of business and is the business still open? ________________

________________

________________

23. Have you ever worked for a large corporation? ☐ YES ☒ NO

If YES:

a) What corporation(s) did you work for and when? ________________

________________

________________

b) Are (were) you satisfied with your work at the corporation? ☐ YES ☐ NO

c) Have you ever had a bad experience with a large corporation? ☐ YES ☐ NO

If YES, please explain. ________________

________________

________________

________________

24. What are your opinions about the compensation that executives of large corporations receive?

I dont know alot about it

________________

________________

________________

25. Have you had any education, training or experience in: accounting, bookkeeping, business, business management, finance, corporate finance, investment banking, law (criminal and/or civil), ethics, law enforcement, marketing, or stock trading? ☐ YES ☒ NO

If YES, please describe your education training or experience: ________________

________________

________________

________________

26. Do you know anyone who works for the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☒ NO

If YES, whom do you know and what is the nature of your relationship with that person? ________________

________________

________________

27. Have you ever had any dealings with any person in the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☒ NO

If YES, describe the nature of those dealings and when they occurred. ________________

________________

________________

28. Do you know (on a personal, professional, or casual basis) any attorneys or judges? ☐ YES ☒ NO

If YES:

a) Please identify whom you know and what his or her job is. ____________________

____________________

b) How do you know this person (these people)? ____________________

____________________

c) What is the nature of your relationship with this person (these people)? ____________________

____________________

____________________

29. Have you ever sued or been sued? ☐ YES ☒ NO

If YES, please tell us if you were the plaintiff (the party suing) or the defendant (the party being sued), the type of case, and the outcome: ____________________

____________________

____________________

30. Have you served as a juror for a:

a) ☐ Criminal case ___ times ☐ Civil case ___ times ☐ Grand Jury ___ times ☒ Never served

b) What type(s) of criminal case(s)? ____________________

c) What was the verdict(s)? _____

d) Were you ever the foreperson? ☐ YES ☐ NO

e) What did you like or dislike about serving on a jury? ____________________

____________________

31. Have you ever filed a criminal complaint or appeared as a witness in any criminal case? ☐ YES ☒ NO

If YES, please explain (including the nature of the case, and whether you appeared as a witness for the prosecution or for the defense). ____________________

____________________

____________________

____________________

32. Have you, any family members, or friends ever worked for the Arthur Andersen accounting firm?

☐ YES ☒ NO

If YES:

a) Who worked for Arthur Andersen? ____________________

____________________

b) When and where did they work for Arthur Andersen? ____________________

____________________

c) Describe the nature of their work for Arthur Andersen. ____________________

____________________

33. Have you, any family members, or friends ever worked for or applied for work with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES:

Juror Number 099

a) Who worked for or applied for work with Enron or its subsidiaries?

b) Were you or any family members or friends hired by Enron or its subsidiaries?

c) When did you or any family members or friends hold/apply for this job?

d) When and how did this employment terminate?

34. Have you, any family members, or friends ever done business with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES, please describe the nature of that business, when it occurred, and who was involved.

35. Have you, any family members, or friends ever owned stock in Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES:

a) Approximately how many shares did you, your family member, or friend own?

b) When did you, your family member, or friend purchase the shares?

c) Did you, your family member, or friend ever sell the shares? If so, please identify when you sold, for what reason, and whether you made or lost money on the sale.

36. Do you know anyone who lost their job or lost money in an investment, an IRA, 401K, or other retirement plan as a result of the bankruptcy of Enron? ☐ YES ☒ NO

If YES, please explain.

37. Have you, any family members, or friends ever been employed by a company that has been affected by the Enron bankruptcy or the layoffs of Enron employees? ☐ YES ☒ NO

If YES, please explain. ______

38. Do you know anyone, whom you have not mentioned above, who has been negatively affected or hurt in any way by what happened at Enron? ☐ YES ☒ NO

If YES, please tell us the name of the person and how they were affected. ______

39. Do you have an opinion about the cause of the collapse of Enron? ☐ YES ☒ NO

a) If YES, what is your opinion? ______

b) On what do you base your opinion? ______

40. What do you think about the U.S. Government's investigation into the collapse of Enron?

I dont know anything about it

41. Have you heard or read about any of the Enron cases? ☐ YES ☒ NO

If YES, please tell us the name of all sources from which you have heard or read about the Enron cases (such as the Houston Chronicle, Time Magazine, Channel 13 news, O'Reilly Factor, Rush Limbaugh radio show, talking with friends, family or co-workers, internet news sources, blogs, etc.)? ______

42. Have you read any books or seen any movies about Enron? ☐ YES ☒ NO

If YES, please describe the book(s) or movie(s) and tell us what you thought of that book or movie:

43. Have you, your business, any family member, or your employer ever filed for bankruptcy?

☐ YES ☒ NO If YES, please tell us who filed and what happened.

44. Who makes the financial decisions in your household? me

45. Do you currently, or have you ever, owned stocks (including mutual funds)? ☐ YES ☒ NO

46. Have you or your spouse lost a significant amount of money in the stock market in the past ten (10) years? ☐ YES ☒ NO If YES, please explain what happened.

47. Which of the following words would describe you? Please check (✓) all that apply:

☐ Assertive ☐ Analytical ☐ Business-minded ☐ Cautious ☐ Compulsive
☒ Creative ☐ Decisive ☐ Detailed ☒ Dedicated ☐ Entrepreneur
☐ Impulsive ☐ Innovative ☐ Judgmental ☒ Law & Order ☒ Leader
☒ Logical ☐ Loyal ☐ Opinionated ☒ Outspoken ☒ Practical
☒ Private ☐ Problem solver ☐ Pro-business ☐ Pro-worker ☐ Pro-Government
☐ Religious ☒ Skeptical ☐ Snap-decisions ☐ Strict ☐ Technical
☐ Thoughtful ☐ Trusting ☐ Visual ☐ Other:

48. Please list (3) people that you admire the *most*:

(1) my dad
(2) my mom
(3) firefighters a police officers

49. Please list (3) people that you admire the *least*:

(1) liars
(2) cons
(3) my sons father

50. What do you enjoy doing in your spare time? watching tv and movies

51. Please list your (3) favorite television shows:
(1) the first 48
(2) laws & order SVU
(3) laws + order CI

52. What courtroom or law-related television shows do you watch? law & order the first 48, cold case

53. What sites on the Internet do you regularly visit? yahoo, ebay

54. What newspapers, magazines, or trade publications do you read? I don't read them

55. Which financial newspapers or magazines (such as the *Wall Street Journal*, *Business Week*, *Barrons*, *Economist*, *Forbes*, *Fortune*, *Money Magazine*, etc.), if any, do you read, and what financial programs, if any, do you watch on television? none

56. Which *one* source do you get *most* of your news from? tv

57. Please list all unions or civic, social, political, professional, and religious groups or organizations to which you or your spouse/partner belong: none

58. Have you held leadership roles in any of these organizations? ☐ YES ☑ NO
If YES, what was the role?

59. Please tell us about any volunteer work you do (now or past): none

60. On social issues, are you: ☐ Very conservative ☐ Conservative ☑ Moderate ☐ Liberal ☐ Very liberal

61. On economic issues are you: ☐ Very conservative ☐ Conservative ☑ Moderate ☐ Liberal ☐ Very liberal

62. Political party preference: ☐ Democrat ☐ Independent ☑ Republican ☐ Other:

63. Other than a traffic ticket, have you ever been arrested for, charged with, or convicted of a crime?
☑ YES ☐ NO
If YES:
a) Describe the nature of the charge. misdemeanor theft shoplifting
b) Did this charge result in a conviction? yes
c) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea? 2003 guilty

d) Do you feel you were treated fairly? yes

64. Other than a traffic ticket, have any of your family members ever been arrested for, charged with, or convicted of a crime? ☐ YES ☒ NO

If YES:

a) What family member?

b) Describe the nature of the charge.

c) Did this charge result in a conviction?

d) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?

e) Do you feel your family member was treated fairly?

65. Which best describes your total yearly household income?

☒ Under $25,000 ☐ $25 - $50,000 ☐ $50 - $100,000 ☐ $100 - $250,000 ☐ More than $250,000

66. Religious Preference: none

67. Are you angry about what happened with Enron? ☐ YES ☒ NO

If YES, please explain.

68. Of all the things you have seen, heard, or read about Enron, what stands out in your mind? I dont know anything about it

69. Do you, any family member, or friend know or have any connection with any of the defendants or their families in this case?

a) Kenneth Lay ☐ YES ☒ NO

b) Jeffrey Skilling ☐ YES ☒ NO

c) Richard Causey ☐ YES ☒ NO

If you have answered YES as to any of the defendants, please explain.

70. Do you have an opinion about any of the following people?

a) Kenneth Lay (former Chairman and Chief Executive Officer of Enron) ☐ YES ☒ NO

If YES, what is your opinion? ____________________

On what do you base your opinion? ____________________

b) Jeffrey Skilling (former Chief Operating Officer, President, Chief Executive Officer of Enron)

☐ YES ☑ NO

If YES, what is your opinion? ____________________

On what do you base your opinion? ____________________

c) Richard Causey (former Chief Accounting Officer of Enron) ☐ YES ☑ NO

If YES, what is your opinion? ____________________

On what do you base your opinion? ____________________

d) Sherron Watkins (former employee of Enron) ☐ YES ☑ NO

If YES, what is your opinion? ____________________

On what do you base your opinion? ____________________

71. Based on anything you have heard, read, or been told do you have any opinion about the guilt or innocence of any of the following people:

a) Richard Causey ☐ YES ☑ NO
b) Jeffrey Skilling ☐ YES ☑ NO
c) Kenneth Lay ☐ YES ☑ NO

If you have answered YES as to any of these people, please explain. ____________________

72. The Judge in this case will instruct you that the indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

73. Notwithstanding the instructions that the judge will give you at the trial, would any opinion you may have formed regarding Enron or any of the defendants prevent you from impartially considering the evidence presented during the trial of these three defendants?

a) Kenneth Lay ☐ YES ☑ NO ☐ UNSURE

b) Jeffrey Skilling ☐ YES ☑ NO ☐ UNSURE

c) Richard Causey ☐ YES ☑ NO ☐ UNSURE

If YES or UNSURE as to any of these people, please explain.

74. Is there anything else you feel is important for the court to know about you? no

75. Would you like to serve on this jury? ☑ YES ☐ NO ☐ DON'T KNOW

Please explain your answer.

76. **Do you have a physical or other disability that would keep you from serving as a juror?**

**☐ YES ☑ NO If YES, please explain.**

77. **This trial will begin on January 17, 2006, and may last as long as 6 months. You may rely upon the jury being in session Monday through Thursday from 8:30 am until 5:00 pm. The court will not be in session during federal holidays. A trial of this length is a hardship on virtually every juror. Would serving as a juror in this case cause such a severe hardship that it would affect your ability to be a fair and impartial juror? ☐ YES ☑ NO**

**If YES, please explain.**

## *OATH*

**I hereby swear or affirm that all of my answers in this questionnaire are true and correct to the best of my ability.**

11/7/05

**Juror's Signature** **Date**

Juror Number 099

# EXPLANATION SHEET

JUROR QUESTIONNAIRE

113
(For Official Use Only)

This form helps the court select a jury. Please answer all blanks *in print and in black ink*. If the question does not apply to you, please write "NA" in it. The lawyers are entitled to information about potential jurors, but if you choose not to answer a question for private reasons, please draw a single line through it.

| | | | |
|---|---|---|---|
| Name<br>Kristine E. Statham | Age<br>42 | Birth Place<br>Fort Rucker, AL | Religious Preference<br>methodist |

| | | | | |
|---|---|---|---|---|
| City of Residence<br>Humble | Years There<br>7 | Employer (ex if retired)<br>Bracewell&Giuliani | Type of Work<br>Accounting | Years<br>6½ |

| | | | | |
|---|---|---|---|---|
| Children's Ages & Sex | 22-m | | | Grown Children's Type of Work |
| | 20-F | | | male-Army-female-housewife |

| | | |
|---|---|---|
| Marital Status<br>married | Spouse's Name<br>Rodney E Statham | Spouse's Birth Place<br>Monroe, LA |

| | | |
|---|---|---|
| Spouse's Employer<br>Austin Industrial, Inc | Type of Work<br>Project leader - Piping | Years<br>6 |

| | | | |
|---|---|---|---|
| List governments that you & relatives have worked for. List law enforcement but not the military. | Who?<br>me | Governmental Unit<br>Vinton, VA.<br>Police Dept. | Type of Work<br>dispatcher |
| Have you served in the military? | Yes [✓ No] | Branch & Highest Rank<br>n/A | Years<br>n/A |

| School Level | School and City | Subject Studied | Degree |
|---|---|---|---|
| High School | Hope Mills H.S. - Hope Mills NC | General | 1981 |
| College | none | n/A | n/A |
| Post College | none | n/A | n/A |

Do you have any Legal, Para-Legal, or Medical Training? Yes [✓ No]
If yes, describe

| | | | |
|---|---|---|---|
| Civil Suits | Have you sued or been sued? | [✓ Yes] No | Case Type personal injury |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes [✓ No] | Case Type n/A |
| | Have you been a witness in court? | Yes [✓ No] | Case Type n/A |
| Criminal Actions | Have you been charged criminally, other than a traffic ticket? | Yes [✓ No] | Case Type n/A |
| | Have you made a criminal complaint? | Yes [✓ No] | Case Type n/A |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes [✓ No] | Case Type n/A |
| | Have you been a witness in court? | Yes [✓ No] | Case Type n/A |

| | |
|---|---|
| List the magazines & newspapers you read | I don't |
| List the civic clubs, societies, unions, and political groups you and your spouse have joined | none |
| Do you have a physical, or other inability that would keep you from serving as a juror? If yes, please describe | no |

Juror Number 113

# INSTRUCTIONS TO JURORS

The attached questionnaire must be answered by you. The answers will assist the judge and lawyers in selecting a jury. Answer all the questions to the best of your ability. There are no right or wrong answers. To answer correctly you must answer honestly.

We need your help so that we can select a fair and impartial jury in this case. Only the judge and lawyers will know your name. Do not assume anything from these questions. The fact they are being asked does not necessarily have anything to do with the evidence that you will hear.

The judge and lawyers know that every person has beliefs and prejudices concerning many things. *You should answer with your true feelings, whatever they may be.* Do not assume that any of your answers will qualify you or disqualify you from serving on this jury.

Please fully answer each question to the best of your ability. Write or print clearly. You must not ask anyone for help. Do the best you can.

If you cannot answer a question because you do not understand it, write "Do Not Understand" in the margin next to the question. If you cannot answer because you do not know, write "Do Not Know" in the margin next to the question. If you want to explain your answer do so briefly in the margin next to the question. If for any reason you do not want to answer any of the questions asked, please write the word "PRIVATE" next to the question and we will take this matter up with you privately.

We are all certain that you understand the importance of juries to our American system of justice. We are confident that you will not try to avoid your duty as a citizen to serve if it is at all possible to do so. Without your help our courts cannot operate properly under the Constitution.

An Explanation Sheet is provided for you at the end of the questionnaire to answer questions more fully. Rather than leaving out information, please turn to the end and put your answers on the explanation sheet provided.

Because your answers are part of the jury selection process and become part of the records of this court, your answers must be truthful and under penalty of perjury.

# JUROR QUESTIONNAIRE

**Juror #:** 113

1. Full Name: Kristine Eileen Statham Gender: ☐ Male ☒ Female Age: 42

2. What is your race? White

3. City of Residence: Humble Years There: 7 Birth Place: Ft. Rucker, AL

4. What is your zip code? 77346

5. Who is your employer and what is your job (if unemployed/retired, what and where was your last job)?
Bracewell + Giuliani, LLP
Accounting Clerk

6. For how many years have/did you worked there? 6 1/2

7. Describe your job duties or responsibilities: input firm account receivable checks

8. What jobs have you held in the past? All in accounting for 20+ years

9. Have you ever been laid off from a job? ☐ YES ☒ NO
If YES, how long ago? n/A

10. Have you or your immediate family ever been affected by any type of layoff or downsizing?
☒ YES ☐ NO
If YES, please explain: my son lost his job when Albertson's closed all Houston stores

11. Have you ever been responsible for hiring, firing, or supervising employees? ☐ YES ☒ NO

12. How far did you go in school [if college or post-college, name the school(s) and any degrees received]?
High School education

13. Current marital status: married If married, for how long? 10 1/2 How many times? 3

14. Spouse's Name: Rodney E. Statham Spouse's Birth Place: Monroe, LA

15. Who is your spouse/partner's employer and what is this person's job (if unemployed/retired, what and where was this person's last job)? Austin Industrial, Inc.
Project leader Piping

16. What jobs has this person held in the past? In the piping field for 20+ years

17. Please list the sex, age, and occupation for each of your children and step-children:

Derek - male - 22 yoa - Army
Cassandra - female - 20 yoa - House wife
Jessica - female - 17 yoa - Hostess

18. List all governments and government agencies (do not include law enforcement or military) that you and your relatives have worked for and tell us who held this job, what governmental unit, and the type of work: none to my knowlege.

19. Have you, any family members, or friends ever been employed by or applied for a job with any law enforcement agency? ☒ YES ☐ NO

If YES:

a) Were you, your family member, or friend hired? yes

b) What job did you, your family member, or friend apply for and/or have? dispatcher Police Fire & Rescue Dept.

c) When did you, your family member, or friend apply for and/or have this job? 1983

d) Do you, your family member, or friend still hold this job today? ☐ YES ☒ NO

If NO, when and how did that employment end? Ex husband went back into Army - we moved

20. Have you or has anyone close to you ever had a negative experience dealing with law enforcement officers at the local or federal level (such as the police, FBI, INS, IRS, etc)? ☐ YES ☒ NO

If YES, please describe: n/A

If YES, what is your opinion toward that agency now? n/A

21. Have you or has anyone close to you ever had a negative experience dealing with the United States government or any governmental agency? ☐ YES ☒ NO

If YES, please describe: n/A

If YES, what is your opinion toward that institution or agency now? n/A

22. Have you or any family members ever owned your (their) own business? ☐ YES ☒ NO

If YES, please tell us what type of business and is the business still open? N/A

23. Have you ever worked for a large corporation? ☒ YES ☐ NO

If YES:

a) What corporation(s) did you work for and when? Qualex, Inc. was in my late 20's don't remember exact dates

b) Are (were) you satisfied with your work at the corporation? ☒ YES ☐ NO

c) Have you ever had a bad experience with a large corporation? ☐ YES ☒ NO

If YES, please explain. N/A

24. What are your opinions about the compensation that executives of large corporations receive? I feel that (like every other emplayee) if they earn it then its okay. If the Company [redacted] was not making money, they couldn't pay themselfs

25. Have you had any education, training or experience in: accounting, bookkeeping, business, business management, finance, corporate finance, investment banking, law (criminal and/or civil), ethics, law enforcement, marketing, or stock trading? ☒ YES ☐ NO

If YES, please describe your education training or experience: Accounting + bookkeeping

26. Do you know anyone who works for the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☒ NO

If YES, whom do you know and what is the nature of your relationship with that person? N/A

27. Have you ever had any dealings with any person in the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office? ☐ YES ☒ NO

If YES, describe the nature of those dealings and when they occurred. N/A

28. Do you know (on a personal, professional, or casual basis) any attorneys or judges? ☒ YES ☐ NO

If YES:

a) Please identify whom you know and what his or her job is. I work for about 250 attorneys

b) How do you know this person (these people)? Business

c) What is the nature of your relationship with this person (these people)? I work for them

29. Have you ever sued or been sued? ☒ YES ☐ NO

If YES, please tell us if you were the plaintiff (the party suing) or the defendant (the party being sued), the type of case, and the outcome: plaintiff - personal injury. I received a small settlement

30. Have you served as a juror for a: no

a) ☐ Criminal case __ times ☐ Civil case __ times ☐ Grand Jury __ times ☒ Never served

b) What type(s) of criminal case(s)? n/A

c) What was the verdict(s)? n/A

d) Were you ever the foreperson? ☐ YES ☒ NO

e) What did you like or dislike about serving on a jury? n/A

31. Have you ever filed a criminal complaint or appeared as a witness in any criminal case? ☐ YES ☒ NO

If YES, please explain (including the nature of the case, and whether you appeared as a witness for the prosecution or for the defense). n/A

32. Have you, any family members, or friends ever worked for the Arthur Andersen accounting firm?

☐ YES ☒ NO

If YES:

a) Who worked for Arthur Andersen? n/A

b) When and where did they work for Arthur Andersen? n/A

c) Describe the nature of their work for Arthur Andersen. n/A

33. Have you, any family members, or friends ever worked for or applied for work with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES:

a) Who worked for or applied for work with Enron or its subsidiaries? N/A

b) Were you or any family members or friends hired by Enron or its subsidiaries? N/A

c) When did you or any family members or friends hold/apply for this job? N/A

d) When and how did this employment terminate? N/A

34. Have you, any family members, or friends ever done business with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES, please describe the nature of that business, when it occurred, and who was involved. N/A

35. Have you, any family members, or friends ever owned stock in Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES:

a) Approximately how many shares did you, your family member, or friend own? N/A

b) When did you, your family member, or friend purchase the shares? N/A

c) Did you, your family member, or friend ever sell the shares? If so, please identify when you sold, for what reason, and whether you made or lost money on the sale. N/A

36. Do you know anyone who lost their job or lost money in an investment, an IRA, 401K, or other retirement plan as a result of the bankruptcy of Enron? ☐ YES ☒ NO

If YES, please explain. N/A

37. Have you, any family members, or friends ever been employed by a company that has been affected by the Enron bankruptcy or the layoffs of Enron employees? ☒ YES ☐ NO

If YES, please explain. The lawfirm I work for had to write off a large amount of legal fees when they went Bankrupt.

38. Do you know anyone, whom you have not mentioned above, who has been negatively affected or hurt in any way by what happened at Enron? ☐ YES ☒ NO

If YES, please tell us the name of the person and how they were affected. N/A

39. Do you have an opinion about the cause of the collapse of Enron? ☒ YES ☐ NO

a) If YES, what is your opinion? I feel someone had to ~~[illegible]~~ be doing something illegal, but I don't know who. (With the exception of the Fastow's who plead guilty)

b) On what do you base your opinion? common sense

40. What do you think about the U.S. Government's investigation into the collapse of Enron?

I don't know anything about the investigation

41. Have you heard or read about any of the Enron cases? ☒ YES ☐ NO

If YES, please tell us the name of all sources from which you have heard or read about the Enron cases (such as the Houston Chronicle, Time Magazine, Channel 13 news, O'Reilly Factor, Rush Limbaugh radio show, talking with friends, family or co-workers, internet news sources, blogs, etc.)?

Co-worker was in the jury pool for Mrs. Fastow's trial. I watch Fox+ Friends in the morning and Britt Hume in the evening - The original story was so long ago that I don't remember a lot about it

42. Have you read any books or seen any movies about Enron? ☐ YES ☒ NO

If YES, please describe the book(s) or movie(s) and tell us what you thought of that book or movie: none

43. Have you, your business, any family member, or your employer ever filed for bankruptcy?

☐ YES ☒ NO If YES, please tell us who filed and what happened. N/A

44. Who makes the financial decisions in your household? my husband & I both

45. Do you currently, or have you ever, owned stocks (including mutual funds)? ☒ YES ☐ NO

46. Have you or your spouse lost a significant amount of money in the stock market in the past ten (10) years? ☐ YES ☒ NO If YES, please explain what happened. N/A

47. Which of the following words would describe you? Please check (✓) all that apply:

☐ Assertive
☐ Creative
☐ Impulsive
☐ Logical
☒ Private
☒ Religious
☒ Thoughtful
☒ Analytical
☐ Decisive
☐ Innovative
☒ Loyal
☐ Problem solver
☐ Skeptical
☐ Trusting
☐ Business-minded
☒ Detailed
☐ Judgmental
☐ Opinionated
☒ Pro-business
☐ Snap-decisions
☐ Visual
☐ Cautious
☒ Dedicated
☒ Law & Order
☐ Outspoken
☒ Pro-worker
☐ Strict
☐ Other: ____________
☐ Compulsive
☐ Entrepreneur
☐ Leader
☒ Practical
☒ Pro-Government
☐ Technical

48. Please list (3) people that you admire the most:

(1) George W. Bush
(2) my husband
(3) my father

49. Please list (3) people that you admire the *least*:

(1) Bill Clinton
(2) Ted Kennedy
(3) Hillary Clinton

50. What do you enjoy doing in your spare time? reading novels, watching movies, Knitting

**51.** **Please list your (3) favorite television shows:**

(1) anything on the History channel

(2) Special Report with Brit Hume

(3) Law + Order

**52.** **What courtroom or law-related television shows do you watch?** Law + Order

**53.** **What sites on the Internet do you regularly visit?** lucianne com - people post news articles from all over the world.

**54.** **What newspapers, magazines, or trade publications do you read?** none

**55.** **Which financial newspapers or magazines (such as the *Wall Street Journal*, *Business Week*, *Barrons*, *Economist*, *Forbes*, *Fortune*, *Money Magazine*, etc.), if any, do you read, and what financial programs, if any, do you watch on television?** I watch Neil Cavuto on Fox

**56.** **Which *one* source do you get most of your news from?** Fox news channel

**57.** **Please list all unions or civic, social, political, professional, and religious groups or organizations to which you or your spouse/partner belong:** we attend Atascocita United Methodist church

**58.** **Have you held leadership roles in any of these organizations?** ☐ YES ☒ NO

**If YES, what was the role?** n/A

**59.** **Please tell us about any volunteer work you do (now or past):** in my teens was a member of Rainbow Girls (Masonic)

**60.** **On social issues, are you:** ☐ Very conservative ☒ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

**61.** **On economic issues are you:** ☐ Very conservative ☒ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

**62.** **Political party preference:** ☐ Democrat ☐ Independent ☒ Republican ☐ Other: ____

**63.** **Other than a traffic ticket, have you ever been arrested for, charged with, or convicted of a crime?**

☐ YES ☒ NO

**If YES:**

**a) Describe the nature of the charge.** n/A

**b) Did this charge result in a conviction?** n/A

**c) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?** n/A

d) Do you feel you were treated fairly? n/A

64. Other than a traffic ticket, have any of your family members ever been arrested for, charged with, or convicted of a crime? ☐ YES ☒ NO

If YES:

a) What family member? n/A

b) Describe the nature of the charge. n/A

c) Did this charge result in a conviction? n/A

d) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea? n/A

e) Do you feel your family member was treated fairly? n/A

65. Which best describes your total yearly household income?

☐ Under $25,000 ☐ $25 - $50,000 ☒ $50 - $100,000 ☐ $100 - $250,000 ☐ More than $250,000

66. Religious Preference: Methodist

67. Are you angry about what happened with Enron? ☐ YES ☒ NO

If YES, please explain. I think it's sad what effect it had on such a huge number of people, but it never really directly affected me, so I'm not angry.

68. Of all the things you have seen, heard, or read about Enron, what stands out in your mind? That a lot of people lost jobs and their retirement savings

69. Do you, any family member, or friend know or have any connection with any of the defendants or their families in this case?

a) Kenneth Lay ☐ YES ☒ NO

b) Jeffrey Skilling ☐ YES ☒ NO

c) Richard Causey ☐ YES ☒ NO

If you have answered YES as to any of the defendants, please explain. n/A

70. Do you have an opinion about any of the following people?

a) Kenneth Lay (former Chairman and Chief Executive Officer of Enron) ☐ YES ☒ NO

If YES, what is your opinion? I was raised to believe none of what you read + 1/2 of what you see. I don't know the man so I have no opinion.

On what do you base your opinion? N/A

b) **Jeffrey Skilling (former Chief Operating Officer, President, Chief Executive Officer of Enron)**

☐ YES ☒ NO

If YES, what is your opinion? Same answer as with Kenneth Lay.

On what do you base your opinion? N/A

c) **Richard Causey (former Chief Accounting Officer of Enron)** ☐ YES ☒ NO

If YES, what is your opinion? Same answer as with Kenneth Lay

On what do you base your opinion? N/A

d) **Sherron Watkins (former employee of Enron)** ☐ YES ☒ NO

If YES, what is your opinion? Same answer as with Kenneth Lay

On what do you base your opinion? N/A

71. **Based on anything you have heard, read, or been told do you have any opinion about the guilt or innocence of any of the following people:**

a) **Richard Causey** ☐ YES ☒ NO
b) **Jeffrey Skilling** ☐ YES ☒ NO
c) **Kenneth Lay** ☐ YES ☒ NO

If you have answered YES as to any of these people, please explain. N/A

72. The Judge in this case will instruct you that the indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

73. Notwithstanding the instructions that the judge will give you at the trial, would any opinion you may have formed regarding Enron or any of the defendants prevent you from impartially considering the evidence presented during the trial of these three defendants?

a) Kenneth Lay ☐ YES ☒ NO ☐ UNSURE
b) Jeffrey Skilling ☐ YES ☒ NO ☐ UNSURE
c) Richard Causey ☐ YES ☒ NO ☐ UNSURE

If YES or UNSURE as to any of these people, please explain. ____________________

74. Is there anything else you feel is important for the court to know about you? I know that I work for several people who were effected by Enron, but I don't know them personally just from rumor around work

75. Would you like to serve on this jury? ☐ YES ☒ NO ☐ DON'T KNOW

Please explain your answer. I believe everyone should do their civic duty by serving, but 6 months is a long time

76. Do you have a physical or other disability that would keep you from serving as a juror?
☐ YES ☒ NO If YES, please explain. N/A

77. This trial will begin on January 17, 2006, and may last as long as 6 months. You may rely upon the jury being in session Monday through Thursday from 8:30 am until 5:00 pm. The court will not be in session during federal holidays. A trial of this length is a hardship on virtually every juror. Would serving as a juror in this case cause such a severe hardship that it would affect your ability to be a fair and impartial juror? ☐ YES ☒ NO
If YES, please explain.

## *OATH*

I hereby swear or affirm that all of my answers in this questionnaire are true and correct to the best of my ability.

11-3-05

Juror's Signature Date

Juror Number 113

# EXPLANATION SHEET

116
(For Official Use Only)

JUROR QUESTIONNAIRE

This form helps the court select a jury. Please answer all blanks *in print and in black ink.* If the question does not apply to you, please write "NA" in it. The lawyers are entitled to information about potential jurors, but if you choose not to answer a question for private reasons, please draw a single line through it.

| | | | |
|---|---|---|---|
| Name Gary [illegible] | Age 54 | Birth Place Elkhart, Indiana | Religious Preference Episcopal |

| | | | | |
|---|---|---|---|---|
| City of Residence Houston | Years There 11 | Employer (ex if retired) EVAL Company of America | Type of Work Human Resources | Years 11 |

| | | | | | |
|---|---|---|---|---|---|
| Children's Ages & Sex None | | | | | Grown Children's Type of Work None |

| | | |
|---|---|---|
| Marital Status Married | Spouse's Name Ellen [illegible] | Spouse's Birth Place Houston, Texas |

| | | |
|---|---|---|
| Spouse's Employer ST Luke's | Type of Work RN Education Specialist | Years 4.5 |

| | | | |
|---|---|---|---|
| List governments that you & relatives have worked for. List law enforcement but not the military. | Who? None | Governmental Unit | Type of Work |

| | | | |
|---|---|---|---|
| Have you served in the military? | Yes [✓ No] | Branch & Highest Rank — | Years — |

| School Level | School and City | Subject Studied | Degree |
|---|---|---|---|
| High School | Elkhart High School | College Prep | 12 yrs |
| College | Purdue University West Lafayette | BA HU | BA |
| Post College | — | — | — |

Do you have any Legal, Para-Legal, or Medical Training? Yes [✓ No]
If yes, describe

| | | | |
|---|---|---|---|
| Civil Suits | Have you sued or been sued? | [✓ Yes] No | Case Type Motor Vehicle |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes [✓ No] | Case Type — |
| | Have you been a witness in court? | Yes [✓ No] | Case Type — |
| Criminal Actions | Have you been charged criminally, other than a traffic ticket? | Yes [✓ No] | Case Type — |
| | Have you made a criminal complaint? | Yes [✓ No] | Case Type — |
| | Have you served on a jury?<br>Verdict reached? | Yes [✓ No]<br>Yes [✓ No] | Case Type — |
| | Have you been a witness in court? | Yes [✓ No] | Case Type — |

| | |
|---|---|
| List the magazines & newspapers you read | Houston Chronicle, Time, Route 66, Texas Highways, Purdue Alumni, AARP, Where to Retire |
| List the civic clubs, societies, unions, and political groups you and your spouse have joined | Human Resources Mgmt Assoc, Episcopal & Unity Churches<br>Route 66 AARP, Purdue Alumni |
| Do you have a physical, or other inability that would keep you from serving as a juror? If yes, please describe | no |

# INSTRUCTIONS TO JURORS

**The attached questionnaire must be answered by you. The answers will assist the judge and lawyers in selecting a jury. Answer all the questions to the best of your ability. There are no right or wrong answers. To answer correctly you must answer honestly.**

**We need your help so that we can select a fair and impartial jury in this case. Only the judge and lawyers will know your name. Do not assume anything from these questions. The fact they are being asked does not necessarily have anything to do with the evidence that you will hear.**

**The judge and lawyers know that every person has beliefs and prejudices concerning many things. You should answer with your true feelings, whatever they may be. Do not assume that any of your answers will qualify you or disqualify you from serving on this jury.**

**Please fully answer each question to the best of your ability. Write or print clearly. You must not ask anyone for help. Do the best you can.**

**If you cannot answer a question because you do not understand it, write "Do Not Understand" in the margin next to the question. If you cannot answer because you do not know, write "Do Not Know" in the margin next to the question. If you want to explain your answer do so briefly in the margin next to the question. If for any reason you do not want to answer any of the questions asked, please write the word "PRIVATE" next to the question and we will take this matter up with you privately.**

**We are all certain that you understand the importance of juries to our American system of justice. We are confident that you will not try to avoid your duty as a citizen to serve if it is at all possible to do so. Without your help our courts cannot operate properly under the Constitution.**

**An Explanation Sheet is provided for you at the end of the questionnaire to answer questions more fully. Rather than leaving out information, please turn to the end and put your answers on the explanation sheet provided.**

**Because your answers are part of the jury selection process and become part of the records of this court, your answers must be truthful and under penalty of perjury.**

# JUROR QUESTIONNAIRE

**Juror #:** 116

1. Full Name: Gary Bruce [illegible] Gender: ☒ Male ☐ Female Age: 54
2. What is your race? Caucasian
3. City of Residence: Houston Years There: 11 Birth Place: Elkhart Indiana
4. What is your zip code? 77081
5. Who is your employer and what is your job (if unemployed/retired, what and where was your last job)?
EVAL Company of America - Director Human Resources
6. For how many years have/did you worked there? 11 years
7. Describe your job duties or responsibilities: Hiring, Terminating, Benefits and All personnel Activities
8. What jobs have you held in the past? Same
9. Have you ever been laid off from a job? ☐ YES ☒ NO
If YES, how long ago?
10. Have you or your immediate family ever been affected by any type of layoff or downsizing?
☐ YES ☒ NO
If YES, please explain:
11. Have you ever been responsible for hiring, firing, or supervising employees? ☒ YES ☐ NO
12. How far did you go in school [if college or post-college, name the school(s) and any degrees received]?
Purdue University - BA
13. Current marital status: Married If married, for how long? 7 years How many times? 3
14. Spouse's Name: Ellen Spouse's Birth Place: Houston, TEXAS
15. Who is your spouse/partner's employer and what is this person's job (if unemployed/retired, what and where was this person's last job)? ST Luke's Hospital - Education Specialist/RN

16. **What jobs has this person held in the past?** RN

17. **Please list the sex, age, and occupation for each of your children and step-children:**
NA

18. **List all governments and government agencies (do not include law enforcement or military) that you and your relatives have worked for and tell us who held this job, what governmental unit, and the type of work:** None

19. **Have you, any family members, or friends ever been employed by or applied for a job with any law enforcement agency?** ☐ YES ☒ NO
**If YES:**
**a) Were you, your family member, or friend hired?**
**b) What job did you, your family member, or friend apply for and/or have?**
**c) When did you, your family member, or friend apply for and/or have this job?**
**d) Do you, your family member, or friend still hold this job today?** ☐ YES ☐ NO
**If NO, when and how did that employment end?**

20. **Have you or has anyone close to you ever had a negative experience dealing with law enforcement officers at the local or federal level (such as the police, FBI, INS, IRS, etc)?** ☐ YES ☒ NO
**If YES, please describe:** But I have a growing mistrust
**If YES, what is your opinion toward that agency now?**

21. **Have you or has anyone close to you ever had a negative experience dealing with the United States government or any governmental agency?** ☐ YES ☒ NO
**If YES, please describe:** But I have a growing mistrust
**If YES, what is your opinion toward that institution or agency now?** The same

22. **Have you or any family members ever owned your (their) own business?** ☒ YES ☒ NO

**If YES, please tell us what type of business and is the business still open?** Sikon-w-Law, para-legal Consultant - Still open, first [illegible], liquor Store - Closed

23. **Have you ever worked for a large corporation?** ☒ **YES** ☐ **NO**

**If YES:**

**a) What corporation(s) did you work for and when?** Jones + Laughlin Steel Corp 1973 - 1981, Atlantic Richfield Co. 1981 - 1990, [illegible] Corp 1990 - 1994, [illegible] Co. 1994 - Present

**b) Are (were) you satisfied with your work at the corporation?** ☒ **YES** ☐ **NO**

**c) Have you ever had a bad experience with a large corporation?** ☐ **YES** ☒ **NO**

**If YES, please explain.**

24. **What are your opinions about the compensation that executives of large corporations receive?** They seem to be a little excessive

25. **Have you had any education, training or experience in: accounting, bookkeeping, business, business management, finance, corporate finance, investment banking, law (criminal and/or civil), ethics, law enforcement, marketing, or stock trading?** ☒ **YES** ☐ **NO**

**If YES, please describe your education training or experience:** business management

26. **Do you know anyone who works for the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office?** ☐ **YES** ☒ **NO**

**If YES, whom do you know and what is the nature of your relationship with that person?**

27. **Have you ever had any dealings with any person in the FBI, the United States Attorney's Office, the United States Department of Justice, or in any District Attorney's Office?** ☐ **YES** ☒ **NO**

**If YES, describe the nature of those dealings and when they occurred.**

28. Do you know (on a personal, professional, or casual basis) any attorneys or judges? ☒ YES ☐ NO

If YES:

a) Please identify whom you know and what his or her job is. Larry Chen, Partner Attorney Fulbright + Jaworski; Christy Schweikshardt, Attorney for Insurance Company

b) How do you know this person (these people)? Business And Friends

c) What is the nature of your relationship with this person (these people)? Business and Friends

29. Have you ever sued or been sued? ☒ YES ☐ NO

If YES, please tell us if you were the plaintiff (the party suing) or the defendant (the party being sued), the type of case, and the outcome: plaintiff; Motor Vehicle incident, Judgement in my favor

30. Have you served as a juror for a:

a) ☐ Criminal case ___ times ☐ Civil case ___ times ☐ Grand Jury ___ times ☒ Never served

b) What type(s) of criminal case(s)? ______

c) What was the verdict(s)? ______

d) Were you ever the foreperson? ☐ YES ☐ NO

e) What did you like or dislike about serving on a jury? ______

31. Have you ever filed a criminal complaint or appeared as a witness in any criminal case? ☐ YES ☒ NO

If YES, please explain (including the nature of the case, and whether you appeared as a witness for the prosecution or for the defense). ______

32. Have you, any family members, or friends ever worked for the Arthur Andersen accounting firm?

☐ YES ☒ NO

If YES:

a) Who worked for Arthur Andersen? ______

b) When and where did they work for Arthur Andersen? ______

c) Describe the nature of their work for Arthur Andersen. ______

33. Have you, any family members, or friends ever worked for or applied for work with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES:

Juror Number 116

a) Who worked for or applied for work with Enron or its subsidiaries? ____________________

b) Were you or any family members or friends hired by Enron or its subsidiaries? ____________

c) When did you or any family members or friends hold/apply for this job? ____________________

d) When and how did this employment terminate? ____________________

34. Have you, any family members, or friends ever done business with Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO*

If YES, please describe the nature of that business, when it occurred, and who was involved.

*However the Company I currently work for use to be part of Enron for awhile before it was sold off. This happen before I started to work for EMMCA.

35. Have you, any family members, or friends ever owned stock in Enron Corporation or any Enron subsidiaries or partnerships? ☐ YES ☒ NO

If YES:

a) Approximately how many shares did you, your family member, or friend own? ____________

b) When did you, your family member, or friend purchase the shares? ____________

c) Did you, your family member, or friend ever sell the shares? If so, please identify when you sold, for what reason, and whether you made or lost money on the sale. ____________

36. Do you know anyone who lost their job or lost money in an investment, an IRA, 401K, or other retirement plan as a result of the bankruptcy of Enron? ☒ YES ☐ NO

If YES, please explain. A Human Resource professional who was responsible for a plant in LaPorte

37. Have you, any family members, or friends ever been employed by a company that has been affected by the Enron bankruptcy or the layoffs of Enron employees? ☐ YES ☒ NO

If YES, please explain.

38. Do you know anyone, whom you have not mentioned above, who has been negatively affected or hurt in any way by what happened at Enron? ☐ YES ☒ NO

If YES, please tell us the name of the person and how they were affected.

39. Do you have an opinion about the cause of the collapse of Enron? ☐ YES ☒ NO

a) If YES, what is your opinion?

b) On what do you base your opinion?

40. What do you think about the U.S. Government's investigation into the collapse of Enron?

It is something that has to be done

41. Have you heard or read about any of the Enron cases? ☒ YES ☐ NO

If YES, please tell us the name of all sources from which you have heard or read about the Enron cases (such as the Houston Chronicle, Time Magazine, Channel 13 news, O'Reilly Factor, Rush Limbaugh radio show, talking with friends, family or co-workers, internet news sources, blogs, etc.)?

Houston Chronicle, Time Magazine, Local TV News & Radio, friends family & co-workers, internet news sources

42. Have you read any books or seen any movies about Enron? ☐ YES ☒ NO

If YES, please describe the book(s) or movie(s) and tell us what you thought of that book or movie:

43. Have you, your business, any family member, or your employer ever filed for bankruptcy?

☐ YES ☒ NO If YES, please tell us who filed and what happened.

44. Who makes the financial decisions in your household? My Wife and I - Joint

45. Do you currently, or have you ever, owned stocks (including mutual funds)? ☒ YES ☐ NO

46. Have you or your spouse lost a significant amount of money in the stock market in the past ten (10) years? ☒ YES ☐ NO If YES, please explain what happened. Drop in Market during 2000 - 2002.

47. Which of the following words would describe you? Please check (✓) all that apply:

| | | | | |
|---|---|---|---|---|
| ☐ Assertive | ☐ Analytical | ☐ Business-minded | ☒ Cautious | ☐ Compulsive |
| ☒ Creative | ☐ Decisive | ☒ Detailed | ☒ Dedicated | ☐ Entrepreneur |
| ☐ Impulsive | ☐ Innovative | ☐ Judgmental | ☐ Law & Order | ☐ Leader |
| ☐ Logical | ☒ Loyal | ☐ Opinionated | ☐ Outspoken | ☒ Practical |
| ☒ Private | ☒ Problem solver | ☐ Pro-business | ☐ Pro-worker | ☐ Pro-Government |
| ☒ Religious | ☐ Skeptical | ☐ Snap-decisions | ☐ Strict | ☐ Technical |
| ☒ Thoughtful | ☒ Trusting | ☒ Visual | ☐ Other: | |

48. Please list (3) people that you admire the *most*:

(1) Ronald Reagan
(2) Dennis Abell (Former Manager)
(3) My Mother

49. Please list (3) people that you admire the *least*:

(1) John Ashcroft
(2) Donald Rumsfeld
(3) Bin Laden

50. What do you enjoy doing in your spare time? Work around the House and Travel

51. Please list your (3) favorite television shows:

(1) Miami Vice

(2) American Dreams

(3) West Wing

52. What courtroom or law-related television shows do you watch?
Use to watch LA Law and Perry Mason

53. What sites on the Internet do you regularly visit? Yahoo News

54. What newspapers, magazines, or trade publications do you read? Houston Chronicle, Time, Route 66, Texas highways, Purdue Alumni, AARP, Where to Retire

55. Which financial newspapers or magazines (such as the *Wall Street Journal*, *Business Week*, *Barrons*, *Economist*, *Forbes*, *Fortune*, *Money Magazine*, etc.), if any, do you read, and what financial programs, if any, do you watch on television? None - only through regular news sources

56. Which *one* source do you get *most* of your news from? NPR - Public Radio

57. Please list all unions or civic, social, political, professional, and religious groups or organizations to which you or your spouse/partner belong: Human Resource Mgt Assn, Episcopal, Unity Church, Route 66, AARP, Purdue Alumni

58. Have you held leadership roles in any of these organizations? ☐ YES ☐ NO
If YES, what was the role?

59. Please tell us about any volunteer work you do (now or past):

60. On social issues, are you: ☐ Very conservative ☒ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

61. On economic issues are you: ☐ Very conservative ☒ Conservative ☐ Moderate ☐ Liberal ☐ Very liberal

62. Political party preference: ☐ Democrat ☐ Independent ☒ Republican ☐ Other:

63. Other than a traffic ticket, have you ever been arrested for, charged with, or convicted of a crime?
☐ YES ☒ NO

If YES:

a) Describe the nature of the charge.

b) Did this charge result in a conviction?

c) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?

d) Do you feel you were treated fairly?

64. Other than a traffic ticket, have any of your family members ever been arrested for, charged with, or convicted of a crime? ☐ YES ☒ NO

If YES:

a) What family member?

b) Describe the nature of the charge.

c) Did this charge result in a conviction?

d) If so, when did the conviction occur, and was it the result of a trial verdict or guilty plea?

e) Do you feel your family member was treated fairly?

65. Which best describes your total yearly household income?

☐ Under $25,000 ☐ $25 - $50,000 ☐ $50 - $100,000 ☒ $100 - $250,000 ☐ More than $250,000

66. Religious Preference:

67. Are you angry about what happened with Enron? ☐ YES ☒ NO

If YES, please explain.

68. Of all the things you have seen, heard, or read about Enron, what stands out in your mind?

The Employees and retirees that lost their savings

69. Do you, any family member, or friend know or have any connection with any of the defendants or their families in this case?

a) Kenneth Lay ☐ YES ☒ NO

b) Jeffrey Skilling ☐ YES ☒ NO

c) Richard Causey ☐ YES ☒ NO

If you have answered YES as to any of the defendants, please explain.

70. Do you have an opinion about any of the following people?

a) Kenneth Lay (former Chairman and Chief Executive Officer of Enron) ☐ YES ☒ NO

If YES, what is your opinion? ______________________

On what do you base your opinion? ______________________

b) Jeffrey Skilling (former Chief Operating Officer, President, Chief Executive Officer of Enron)
☐ YES ☒ NO
If YES, what is your opinion? ______________________

On what do you base your opinion? ______________________

c) Richard Causey (former Chief Accounting Officer of Enron) ☐ YES ☒ NO
If YES, what is your opinion? ______________________

On what do you base your opinion? ______________________

d) Sherron Watkins (former employee of Enron) ☐ YES ☒ NO
If YES, what is your opinion? ______________________

On what do you base your opinion? ______________________

71. Based on anything you have heard, read, or been told do you have any opinion about the guilt or innocence of any of the following people:

| | |
|---|---|
| a) Richard Causey | ☐ YES ☒ NO |
| b) Jeffrey Skilling | ☐ YES ☒ NO |
| c) Kenneth Lay | ☐ YES ☒ NO |

If you have answered YES as to any of these people, please explain. ______________________

Juror Number 116

72. The Judge in this case will instruct you that the indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

73. Notwithstanding the instructions that the judge will give you at the trial, would any opinion you may have formed regarding Enron or any of the defendants prevent you from impartially considering the evidence presented during the trial of these three defendants?

a) Kenneth Lay ☐ YES ☒ NO ☐ UNSURE
b) Jeffrey Skilling ☐ YES ☒ NO ☐ UNSURE
c) Richard Causey ☐ YES ☒ NO ☐ UNSURE

If YES or UNSURE as to any of these people, please explain.

74. Is there anything else you feel is important for the court to know about you? no

75. Would you like to serve on this jury? ☐ YES ☐ NO ☒ DON'T KNOW

Please explain your answer. * Refer to answer for question #77

76. Do you have a physical or other disability that would keep you from serving as a juror?

☐ YES ☒ NO If YES, please explain. ______

77. This trial will begin on January 17, 2006, and may last as long as 6 months. You may rely upon the jury being in session Monday through Thursday from 8:30 am until 5:00 pm. The court will not be in session during federal holidays. A trial of this length is a hardship on virtually every juror. Would serving as a juror in this case cause such a severe hardship that it would affect your ability to be a fair and impartial juror? ☐ YES ☒ NO*

If [redacted], please explain. However, I am the only HR Professional at my Company. If I am gone for six months and can only provide part time coverage would it lead to the elimination of my job?

People age 55 and nearing retirement think about things like this.

## OATH

I hereby swear or affirm that all of my answers in this questionnaire are true and correct to the best of my ability.

Gary [illegible] 11/20/05
Juror's Signature Date

Juror Number 116

# EXPLANATION SHEET

# PETITIONER'S BRIEF

Supreme Court, U.S.
FILED
DEC 1 1 2009
OFFICE OF THE CLERK

No. 08-1394

IN THE
# Supreme Court of the United States

JEFFREY K. SKILLING,
*Petitioner*,

v.

UNITED STATES OF AMERICA,
*Respondent*.

**On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

# BRIEF FOR PETITIONER

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## QUESTIONS PRESENTED

1. Whether the federal "honest services" fraud statute, 18 U.S.C. § 1346, requires the Government to prove that the defendant's conduct was intended to achieve "private gain" rather than to advance the employer's interests, and, if not, whether § 1346 is unconstitutionally vague.

2. When a presumption of jury prejudice arises because of the widespread community impact of the defendant's alleged conduct and massive, inflammatory pretrial publicity, whether the Government may rebut the presumption of prejudice, and, if so, whether the Government must prove beyond a reasonable doubt that no juror was actually prejudiced.

## PARTIES TO THE PROCEEDING

Petitioner is Jeffrey K. Skilling, defendant-appellant below. Additional defendants in the district court, who were not parties in the court of appeals and are not parties here, were Kenneth L. Lay and Richard A. Causey.

Respondent is the United States of America, appellee below.

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# BRIEF FOR PETITIONER

## OPINIONS BELOW

The opinion of the Fifth Circuit is reported at 554 F.3d 529. The relevant opinions of the U.S. District Court for the Southern District of Texas are unpublished.

## JURISDICTION

The district court had jurisdiction under 18 U.S.C. § 3231. The court of appeals had jurisdiction under 28 U.S.C. § 1291. The Fifth Circuit entered judgment on January 6, 2009. A petition for rehearing was denied on February 10, 2009. The petition for a writ of certiorari was filed on May 11, 2009 and granted on October 13, 2009. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS

Relevant constitutional and statutory provisions are reprinted in the Statutory Appendix.

## STATEMENT

### A. Factual Background And Trial

In 2001, the seventh-largest company in America, Enron Corp., went bankrupt in a matter of weeks. PA2a.[1] The bankruptcy was catastrophic for Houston, where the company was based, and it elicited immediate calls for retribution. The President specially convened an "Enron Task Force" to find criminal wrongdoing.

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[1] Citations forms are "R" and "SR" (Fifth Circuit record and supplemental record); "PA" (petition appendix); "JA" (Joint Appendix); "SA" (Supplemental Joint Appendix); "JKS" (Skilling's Motion to Supplement the Record on Appeal); "JQ" (juror questionnaires); "GB" (Government merits briefs); "C.A. Br." (appellate briefs).

### 1. *The Government Develops And Prosecutes Its Honest-Services Fraud Theory*

Petitioner Jeffrey Skilling was a longtime Enron executive, serving as its President and COO for several years before assuming the position of CEO from February to August 2001. *Id.* He was indicted in 2004 along with Enron Chairman and CEO Ken Lay and Enron CAO Richard Causey. PA18a. The cornerstone of the indictment was the conspiracy count, which alleged an overarching conspiracy to commit wire or securities fraud. *Id.* The remaining counts—securities fraud, making false statements to Enron's auditors, and insider trading—alleged conduct flowing from that conspiracy. *Id.*; JA322a-357a.

The Government took time to settle on what crimes, if any, occurred at Enron, R:13292—other than secret looting by company CFO Andrew Fastow. Critically, Skilling was in no way implicated in Fastow's theft, R:21622-27, 21685, and the Government has never suggested that Skilling shifted or used company funds for his own personal purposes. Prosecutors later admitted that the case against Skilling was plagued by "fundamental weaknesses," because he "took steps seemingly inconsistent with criminal intent," there were "no 'smoking gun' documents," and prosecutors relied heavily on cooperating witnesses who had "marginal credibility." Hueston, *Behind the Scenes of the Enron Trial*, 44 Am. Crim. L. Rev. 197, 197-98, 201 (2007).

Skilling challenged the Government's case at every turn, presenting evidence showing, for example, that the subject transactions and business decisions were lawful, the risks were fully vetted by outside advisors and Enron's Board, his alleged misstatements were accurate, and all relevant information was disclosed to investors. Pet. C.A. Br. 24-58. The Government responded by emphasizing its theory of honest-services fraud—as opposed to securities or money-or-property wire fraud—as the basis for the alleged fraud conspiracy. It told the jury that this case was "not about what caused the bankruptcy of Enron," R:36449, or even about "greed," R:37006-07, 37065. Rather, prosecutors argued, Skilling took inappropriate measures to maintain or improve Enron's stock price, in violation of his fiduciary duties. R: 14784, 14799-800.[2] The allegedly improper actions included business decisions that ostensibly exposed Enron to an irresponsible level of long-term risk in exchange for short-term stock-price benefits. JA1044a, 1046a, 1047a. In closing argument, the Government declared that Skilling and Lay committed honest-services fraud because they violated a duty to Enron's "employees"—one prosecutors described as "a duty of good faith and honest services, a duty to be truthful, and a duty to do their job … and do it appropriately." R:37065.

The Government argued that Skilling committed every alleged act of misconduct with the specific intent to advance Enron's interests—by increasing reported earnings, maintaining an investment-grade credit rating, and improving the price of Enron's stock. JA275a-76a, 282a-83a, 286a-88a. Government witnesses agreed that Skilling was utterly dedicated and loyal to Enron. JA1048a ("had the best interests of Enron in mind" and was "fighting for [his] company"), JA1042a ("a true believer in Enron"), *id.* ("very committed to the company"), JA1047a-48a ("[r]eally dedicated to the company"). Indeed, Skilling *declined* $50 million in guaranteed compensation shortly before the alleged conspiracy began, to set an example for management, R:28481-86, and offered to invest $70 million of his own funds—effectively his entire net worth—to keep the company operating when it was on the brink of collapse in late 2001. R:28238-43. In the Fifth Circuit's words, "Enron created a goal of meeting certain earnings projections," and Skilling's actions were intended to achieve that goal. PA27a.

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[2] JA1052a-53a ("we're here to decide" whether Skilling "breached [his] duties and obligations to [Enron's] shareholders and employees"); R:21224-25 ("fiduciary responsibility"); R:32262-64 (duty of "honesty, candor, and fairness"); R:36568 ("duty" of "honest services"); R:37013-14, 37043 (duties of "loyalty, "honesty," "honest services"); *accord* 14751, 14757-58, 14784, 15864-67, 22769-70, 37065.

The Government did not argue on appeal or at the certiorari stage that Skilling sought private gain at the expense of Enron. To the contrary, its consistent position in this case has been that the evidence needed only to show—and did only show—"a material violation of a fiduciary duty that defendants owed to Enron and its shareholders." R:41327-28.

### 2. *The Widespread Impact Of Enron's Collapse On Houston Prejudices The Community*

As the trial approached, it became clear that the seismic effect of Enron's collapse on Houston—frequently compared by residents to the September 11 attacks, SR3:544-46—eliminated any possibility that Skilling could receive a fair trial there. Thousands of Houstonians had lost their jobs and retirement savings. JA1147a-51a; SR3:1445-48, 1899-900. The bankruptcy caused a severe economic downturn in the city generally, with businesses ranging from hotels to barbershops to the city's largest law firm suffering enormous losses. JA1287a-91a; SR3:864-65, 933-37, 1201, 1205, 1219-23, 1229-31, 1243-47, 1258-61, 1267-69. One in three Houstonians reported that they personally knew someone harmed by Enron's collapse. JA376a; R:2701. The Government itself described the *entire community of Houston* as a "victim" of Skilling's alleged crimes. R:42161. Five judges on the Fifth Circuit recused themselves from this case. Remarkably, connections to Enron ran so deep that the entire local U.S. Attorney's Office in Houston recused itself from the investigation. SR3:608-12.

The devastating impact of Enron's collapse on Houston was reflected in the nonstop media coverage, which included blistering daily attacks on the executives—principally Skilling and Lay—deemed responsible for Enron's demise. Between 2001 and 2004, when Skilling was indicted, the *Houston Chronicle* ran nearly 100 stories just about victims of Enron's collapse. R:2995-97; SR3:2114. The coverage is summarized and exemplified at PA141a-58a, but can be fully understood only by reviewing the briefs and exhibits filed below.

What follows is a sampling of the searing media attacks. One column in the *Houston Chronicle*, entitled "Your Tar and Feathers Ready? Mine Are," demanded a "witch hunt." JA1172a. Houstonians maintained that Skilling and Lay had "stole[n] money from investors," "ripped off their stockholders for billions," and "destroyed a great corporation." SR3:522-30, 690-706. Skilling and Lay were compared to Al Qaeda, Hitler, Satan, child molesters, rapists, embezzlers, and terrorists and encouraged to "go to jail" and "to hell." JA1152a-57a, 1165a-71a, 1202a-17a, 1397a-99a; SR3:705-06. Some suggested they should face "the old time Code of the West." SR3:854. A local rap song (entitled "Drop the S Off Skilling") threatened Skilling's murder. JA1419a-23a. Polling showed that Houstonians routinely labeled Skilling a "pig," "snake," "crook," "thief," "fraud," "asshole," "criminal," "bastard," "scoundrel," "liar," "weasel," "economic terrorist," "evil," "deceitful," "dishonest," "greedy," "devious," "lecherous," "despicable," "equivalent [to] an axe murderer," and a man who had "no conscience," "stole from employees," and "swindled a lot of people." JA379a-82a, 417a-492a. Skilling's picture was "used as a dartboard" and placed on "Wanted" posters next to Osama bin Laden. JA1163a; SR3:847. When Skilling was indicted, the *Chronicle* proclaimed: "Most Agree: Indictment Overdue." JA1393a-96a. The paper's negative coverage extended to articles on sports, education, music, and more. JA1373a-78a, 1386a-89a, 1411a-12a; SR3:805-43; R:38388, 38927, 39209, 39212, 39653, 39831.

Skilling was pronounced guilty throughout Houston long before trial. His claims of innocence were rejected as "ludicrous," "not credible," "distasteful," a "doofus defense," "smoke screen," and "fantasy world." JA1169a-71a, 1400a-05a; SR3:566-68, 602-06; R:12066-67. Prosecutors fueled the blaze, giving press conferences and interviews denouncing Skilling as a "corporate crook" who "must be brought to justice" and announcing they would seize Skilling's assets and provide them to Enron's victims. R:1452-53, 2645-46, 12592-94; SR3:1551-77. Civil cases against Skilling flooded the local courthouse and were publicly applauded by the media and prosecutors. JA1455a; R:12078, 12460-62, 14236; SR3:3224-25. Houstonians proclaimed Skilling "guilty as sin," and argued "he needs to pay the price," go to "jail for 20 years," and "be hanged." JA379a-82a, 417a-92a. A *Government poll* found that almost 60% of Houstonians believed Skilling and Lay were guilty. R:4055, 4107-12.

After the Government's Arthur Andersen conviction was reversed by this Court and another Enron trial resulted in no convictions, Houstonians sought their retribution from Skilling and Lay. The *Chronicle* described their trial as the "Big One," the "showdown," and the "main event," JA1866A; SR3:1711-12, 1936; R:40002, declaring: "From the beginning, the Enron Task Force has had one true measure of success: Lay and Skilling in a cold steel cage." JA1457a-60a. "After more than four years of waiting, of allowing the hurt and anger and resentment to churn aside," Skilling's conviction would finally bring closure to Houston. R:39904, 39946-47.

### 3. *The Court Refuses To Change Venue And Conducts A Truncated Voir Dire Of A Biased Jury Venire*

Skilling moved to change venue, invoking the Fifth and Sixth Amendments of the Constitution, Federal Criminal Rule 21, and the court's general supervisory powers. R:2595-2678. The motion was denied without hearing. R:4433-56. Skilling renewed his motion just before trial, after receiving juror questionnaire responses that revealed animus pervading the venire, and after his co-defendant Causey—who had been featured in the questionnaires—pled guilty to great local fanfare, strongly reinforcing potential juror bias (as the Fifth Circuit recognized). R:12036-83; PA57a. His motion was again denied without hearing. R:14115-16.

The juror questionnaires revealed the breadth and depth of prejudice—potential and actual—throughout the Houston community. Of the 283 Houstonians who responded, 86% had heard of or read about Enron-related cases; 80% expressed anger, negative views of Skilling and Lay, or negative opinions about the role they played in Enron's collapse; 60% had an unfavorable opinion about the cause of Enron's bankruptcy (almost always "greed," "accounting fraud," "lie[s]," and "criminal" and "illegal activities"); 47% said they, their family, or friends had some connection to Enron or its bankruptcy; 40% openly admitted that they could not be fair or might not be able to consider the evidence impartially; and 40% had an opinion about Skilling's and Lay's guilt. R:12052-64, 12375-89; Dkt-618 Apps. B, N, Q, R (sealed).

When asked in the questionnaires to express themselves in their own words, prospective jurors did so with venom. Enron "gave Houston a black eye," "tarnished the [city's] image," "betrayed" Houstonians, and was "a stigma" and "an embarrassment." Dkt-618 Apps. N, O. Skilling was "the devil," a "sleaze," a "greedy executive[]," "totally unethical and criminal," "the biggest liar on the face of the earth," "a high class crook" "without a moral compass" who "took everything he could" and "would lie to his own mother if it would further his own cause." R:12056-57, Dkt-618 Apps. J, N, O, Q, S. Jurors wrote that Skilling "was at the center of the financial schemes," "responsible for [the] collapse," "knew about the accounting problems," "initiated, designed, and authorized ...illegal actions," and "defraud[ed] Enron employees and investors." Dkt-618 Apps. Q, R. He was "guilty as hell," "guilty—criminally and morally," "guilty without any doubt," and "guilty as sin—come on now." *Id.* He and Lay should "be stripped of all their assets," "pay back every cent," "spend the rest of their lives in jail," "be reduced to having to beg on the corner and live under a bridge," "hang," "serve many years in prison," "be prosecuted to the maximum." Dkt-618 Apps. K, Q-S. According to the uncontested testimony of a leading jury-behavior expert, only 18 of the 283 questionnaires did *not* raise doubts about the jurors' ability to be fair. JA785a-93a, 800a-10a; R:39905-07.

The Government stipulated to striking 42% of the pool without voir dire. R:11890-93, 13593-98. But those it insisted on retaining included many with obvious biases. JA817a ("they knew exactly what they were doing"), JA894a ("they stole money"), JQ-61 & JA929a-34a ("angry"; collapse caused by "criminal" behavior); JQ-74, JA948a-53a & R:14602 ("angry"; "[t]here is never enough money for the higher-ups so they have to steal it"); JQ-76 & JA967a-68a (Skilling "guilty of knowing what was happening to the company, but did nothing to let the employees know"). One came to voir dire and openly demanded vengeance: "I would dearly love to sit on this jury. I would love to claim responsibility, at least 1/12 of the responsibility, for putting these sons of bitches away for the rest of their lives." JA819a-20a. The district court tacitly recognized—and *reinforced*—the extent of the bias, announcing to jurors that the collapse was "a major event in this area" and that "it would take courage" for them to acquit. JA956a-57a.

Skilling sought extensive, non-public, individualized voir dire to try to screen out all the potentially biased jurors—especially in light of the questionnaire responses exposing specific prejudices. R:12067-74. But the court took the opposite tack, holding voir dire before throngs of reporters in a ceremonial courtroom, limiting it to *just five hours*,[3] and twice chastising defense counsel for asking too many questions about potential prejudice because the court had prohibited "individual voir dire." JA878a-79a, 966a; R:11050-54, 11803-08. Just 46 people were questioned—eight more than the minimum necessary—and only for a few minutes each. Only seven were struck for cause, with one excused for hardship. JA894a-95a, 897a, 947a-48a, 960a, 989a, 1006a, 1008a-09a.

Most of the court's questions were conclusory and high-level, and failed adequately to probe jurors' true feelings. Many jurors were merely asked how they get their news and what they "remembered" from Enron-related publicity. If they did not specify anything inflammatory, that was the end of the inquiry. JA844a-53a, 860a-61a, 889a-91a, 944a-45a, 988a. In some cases, the court failed to ask about clearly troubling questionnaire responses. JQ-4 (Enron's collapse caused by "widespread greed," Enron "fool[ed] people"), JA843a-47a; JQ-61 (Enron's collapse "criminal"), JA928a-34a. Sometimes the court asked but got no answer. JA991a-92a (no answer to question about "corporate greed" causing collapse).

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[3] *Cf., e.g., U.S. v. McVeigh*, 143 F.3d 1166, 1181-84 (10th Cir. 1998) (18-day voir dire *after venue transfer* and screening questionnaires); *U.S. v. Campa*, 459 F.3d 1121, 1147 (11th Cir. 2006) (en banc) (seven days; questionnaire); *see also* Pet. C.A. Reply 109-10.

Skilling was repeatedly forced to use peremptory challenges on prospective jurors who plainly should have been struck for cause, as in the case of jurors who reported that Enron's collapse cost them money (JA880a; JQ-101), and one who stated that Skilling was guilty because of what she had "seen on TV and ... in the 'Wall Street Journal,'" and that given "the amount of money involved and the amount of people that were affected ... it just doesn't seem possible that somebody didn't know something." JA998a-1001a; JQ-101.

At the Government's urging, the district court consistently took prospective jurors at their word once they claimed they could be fair, no matter what other indications of bias were present. JA886a (GOVERNMENT: "Your Honor, we have to take her at her word.... [S]he said earlier what her opinions were, and that based upon the law, they've changed. That's what we ask of our jurors." COURT: "I agree. [The defense motion for cause] is denied."), 924a-25a, 934a. For example, Juror 75 assured the court that she could presume innocence and hold the Government to its burden, notwithstanding flagrantly prejudicial questionnaire responses. JQ-75 ("crooked executives, cooked books, and the employees paid the price"). Her promise of fairness was enough to satisfy the court. When defense counsel followed up, the juror admitted that she had "already decided" there was fraud at Enron, that part of the burden was "already resolved," and that defendants would have a difficult time changing her mind. Even then the court struggled to rehabilitate her, before finally acquiescing in her dismissal. JA953a-60a. Similarly, Juror 29 said Enron cost her $50-60,000 in her 401(k) and that a friend who worked for Enron got laid off and lost savings. On her questionnaire, she wrote Skilling was "guilty," and "not an honest man." JQ-29. At voir dire, she said Skilling was "dishonest," "arrogant," and "intimidated people," and there was "corruption" at Enron. Even the court noted, "[y]ou sound like you've already assumed that they're guilty." She responded "at one time" she did, but "I don't now," because "I think I can set that aside." Incomprehensibly, the defendants' cause challenge was denied. JA880a-86a, 1018a.

Many jurors responded directly to signaling that a public statement of "fairness" was expected of them, despite having reported doubts about their ability to be fair. For instance, Juror 101's questionnaire responses contained numerous troubling statements, including her admission that she was "unsure" she could be fair. At voir dire, the court asked if she could decide the case based on the evidence, and all she could muster was "possibly." The court then told her "[w]hat we want are people who can base their decision on the facts that they hear in the courtroom," and asked again: "[W]ill you be able to base your decision on what you hear in court?" This time, she upgraded her response to "probably." The court pressed a third time: "[C]an you in your heart of hearts assure us that you will base your decision on what you hear in this courtroom?" At last she got the message: "It will be based on what I hear in the courtroom." JA1000a-01a.

### 4. *Unsurprisingly, The Seated Jurors Largely Share Houston's Prejudices*

Many of those selected for Skilling's trial were directly affected by Enron's collapse and even openly biased. Of the 12 seated jurors:

- nine had been exposed to publicity about the case (SA12sa, 27sa, 42sa, 57sa, 72sa, 87sa, 118sa, 133sa, 177sa);
- nine expressed sympathy for Enron's employees or had a personal connection with Enron (SA11sa, 26sa, 60sa, 75sa, 87sa, 116sa-17sa, 151sa, 165sa, 180sa);
- four had negative opinions about the cause of Enron's bankruptcy (SA12sa, 27sa, 57sa, 177sa);
- four knew former Enron employees who lost savings (SA11sa, 26sa, 117sa; R:14537-38);
- three had negative views of Skilling and Lay or doubted their own impartiality (SA16sa, 106sa; R:14460);
- three said they were "angry" (SA60sa, 75sa, 90sa);
- one got laid off just before Enron's bankruptcy and was forced to cash out her 401(k), and thus empathized with Enron employees (SA60sa);
- one "repeatedly" commented to co-workers that "she was very interested in serving on the Enron jury" (JKS-13; Trial Tr. at 3-10 (Feb. 15, 2006) (sealed)); and
- one believed he might own Enron stock (SA19sa).

In their questionnaires, the seated jurors disclosed hostile opinions of the defendants and intensely prejudicial opinions about the facts of the case:

- "they probably knew they were breaking the law" (SA106sa);

- Skilling is “suspect” (SA16sa);
- “someone had to be doing something illegal” (SA222sa);
- “Collapse was due to greed and mismanagement” (SA12sa);
- “Greed on Enron’s part .... A lot of people were hurt financially” (SA27sa, 30sa);
- “It makes me angry that so many people lost their jobs and their retirement savings” (SA60sa);
- “angry” about Enron (SA60sa, 75sa);
- “Not enough corporate controls or effective audit procedures to prevent mismanagement of corporate assets” (SA57sa);
- “the involuntary loss of the 401(k) savings made the most impact on me, especially because I have been forced to forfeit my own 401(k) funds to survive layoffs” (SA60sa);
- “Poor management and bad judgment. Greed” (SA177sa);
- “The small average worker saves money for retirement all his life. It’s not right for someone or anyone to take or try to take this part of his life away from him” (SA192sa).

At voir dire, the jurors were inevitably persuaded to profess some measure of fairness, but their promises were hardly reassuring. To explain her questionnaire statement that “I think they probably knew they were breaking the law,” SA106sa, Juror 63 said only that she did not “know what [she] was thinking at the time.” JA937a. Juror 87 (the forewoman) stated that she believed “something went wrong" at Enron, somebody there was "greedy," and the choice before her was "are they guilty of something illegal ... [o]r are they just guilty of being poor managers?" JA974a-76a. Juror 10 said "somebody wasn't running the ship"; greed and mismanagement of its "head people" brought Enron down; and defendants were "suspect" because of "what I see on television." When asked if he would have any reluctance returning to his community after an acquittal, he said, "[m]aybe some hesitancy." JA851a-52a.

And then there was Juror 11. The *USA Today* headline says it all: "If Juror No. 11 is any indication: Look out, defense." Farrell, *USA Today*, Feb. 6, 2006, at Money 2B. Juror 11 worked across the street from Enron, and had a friend who "absolutely" lost money in his 401(k) because of Enron's collapse. JA853a-54a. And he knew about accusations that Enron illegally manipulated California energy prices—irrelevant and prejudicial claims the district court had excluded from the trial. SA27sa; R:13610-19. Juror 11 also greatly distrusted CEOs like Skilling and Lay. He said:

- All CEOs are "greedy" people who "stretch[] the legal limits." JA854a, 857a.
- "I'm not going to say that they're all crooks, but, you know," and "some get caught and some don't." JA854a-55a.
- When asked whether he would assume that the defendants "must have done something illegal," he replied "[n]o, not necessarily," but then added "I'm not sure" and "there's a lot of stuff that goes on that we don't know about that." JA857a.

- "Anyone from Billy Sol Estes to T. Boone Pickens, it's all greed. All the way up." JA854a.

When asked whether he thought Lay was greedy, Juror 11 responded, "Yeah, I think so." When asked if defendants would have to change his mind, he replied, "I don't hardly know how you could do that." The court then asked, "do you think anybody who makes $10 million or whatever he makes is probably greedy?," and the juror backpedaled: "No, I can't really answer that. I don't know." Defendants' cause challenge was denied. JA857a.

Skilling challenged the entire jury, objected specifically to seven seated jurors, objected to the court's failure to grant him additional peremptories, and objected to not being able to voir dire each juror fully. SA3sa-4sa; *see* R:14686-88. Every motion and objection was denied.

### 5. *The Media Frenzy Continues Through Trial*

The commencement of trial in Houston on January 30, 2006, only exacerbated the media frenzy. For the local media, it was, "AT LAST, THE BIG ONE." JA1866a. The courthouse braced for hundreds of journalists and curiosity seekers. R:39922; 39936; 39999-40000. Extra police were assigned to manage crowds outside. JA1878a-80a.

The district court acknowledged that jurors would follow news coverage despite instructions not to do so, R:14439-40, and the media relentlessly attacked Skilling's defense, sometimes for the express benefit of the jurors. A *Chronicle* staff editorial professed to tell jurors why they should convict, and another column warned the "ladies and gentlemen of the jury" not to be "drawn in by the circular arguments and seductive logic" of the defense. JA1876a. The *Chronicle* set out to publicize evidence ruled inadmissible at trial; one feature recounted the evidence the district court had excluded, telling readers "it's worth remembering what the defense doesn't want the jury to hear." JA1923a. Jurors were reminded that theirs was "the hottest seat in town," and that "a city full of people whose lives were damaged by the scandal" would be seeking accountability for the bankruptcy that "rocked the city." R:39904.

The *Chronicle* covered "courtroom developments minute by minute, hour by hour," with various reporter-bloggers sitting in the courthouse and reporting live. R:38897-98, 38914-15, 38946-47; JA1487a-1858a; SR3:1691, 1701-09; PA155a-58a. It kept an exhaustive "guide" to the trial on its website, consisting of a "scorecard" of the charges, graphics explaining why various transactions were fraudulent, and a list of "key witnesses" and summaries of their likely testimony. R:39904, 39912, 39916, 39920, 39924, 39928, 39930, 39932, 39938, 39940, 39956, 39961, 39981, 39999, 40002, 40009, 40013, 40027. *Chronicle* coverage described the eventual testimony of those witnesses in detail, reporting that they disclosed "a culture of management corruption," "white collar deceit," and "greed." JA1906a, 1910a-12a, 1897a-901a, 1913a-19a, 1927a-30a; R:39658.

The *Chronicle* assured readers that the prosecution's case was "solid" and "damning," while ridiculing the defense as "sweeping revisionism," "delusional," "laughable," and "absurd." JA1526a, 1970a; R:39459-61, 39571, 39775-76, 39849. The *Chronicle* bemoaned the waning national interest in the story, but Houston's appetite did not let up. JA1887a-90a.

Before trial, even the Government admitted that—as it stated in a proposed gag order—there was a "reasonable likelihood that extra-judicial communications during trial will prejudice the parties' rights to a fair trial." R:12064-65. The court declined to issue the order, but its reasoning unwittingly summarized one key reason the case never should have proceeded in Houston: it was simply "impossible to prevent jurors from reading about the case and listening and watching media reports." R:10951.

### 6. *The Houston Jury Inevitably Convicts*

The Government vigorously opposed instructing the jury that a denial of "honest services" is "something close to bribery." R:36022. The "Government's evidence did not show[] that defendants engaged in bribery," it argued. R:41327-28. "Instead, the Government's evidence shows that defendants committed (or conspired to commit) honest-services fraud by breaching their fiduciary duties to Enron and its shareholders." *Id.* The Government succeeded in so instructing the jury, R:36424-25, and also succeeded in linking the remaining counts to the expansive honest-services conspiracy charge. R:36408-09; Pet. C.A. Br. 72-76.

On May 25, 2006, the jury convicted Skilling on 19 counts: one count of conspiracy to commit securities or wire fraud; 12 counts of securities fraud; five counts of making false statements to auditors, and one count of insider trading. PA19a. The jury acquitted Skilling on nine counts of insider trading. *Id.* After trial, jurors expressed pride that their verdict gave "victims ... the accountability they deserved." R:38967-68; *see* R:40982 ("We were always accountable. We had to find a way to circle back and tie up loose ends. And I think those [Enron] employees were entitled to the same thing."); JA1953a (jurors "kept their focus throughout the trial on the personal harm done to thousands of people when Enron spiraled into bankruptcy"). Skilling was sentenced to 292 months' imprisonment, three years of supervised release, and $45 million in restitution. PA19a.

### B. Appellate Proceedings

1. The Fifth Circuit agreed with Skilling on appeal that because of "pervasive community bias against those who oversaw Enron's collapse" and "inflammatory pretrial publicity in the Houston area," the district court erred in failing to apply a "presumption of prejudice" among potential jurors. PA59a-60a. But the district court nevertheless did not err in refusing to change venue, the Fifth Circuit held, because the Government adequately "rebutted any presumed prejudice," PA54a—even though the district court itself never applied the presumption. The court concluded that the five-hour voir dire sufficed to rebut the presumption because the court admonished jurors not to seek vengeance against Enron's officers, warned them not to trust what they read in newspapers, and assessed their credibility. PA62a-68a.

2. Skilling also argued on appeal that his conduct, even if wrongful in some way, was not the crime of honest-services fraud, because the Government conceded that his acts were not intended to advance his own interests instead of Enron's. The Fifth Circuit agreed that Skilling's acts were not intended to harm Enron or to obtain personal benefit

at Enron's expense (PA27a), but it held that such facts are irrelevant to an honest-services prosecution (PA23a-27a). The only pertinent elements of § 1346, the court held, are a material breach of a state-law fiduciary duty and resulting harm to the employer. PA29a.

## SUMMARY OF ARGUMENT

I. Skilling's trial never should have proceeded in Houston. Skilling's rights to due process and an impartial jury required the district court to exercise its authority under Criminal Rule 21 and its general supervisory power to transfer the case to a venue that was not rife with the anger and pain engendered by Enron's collapse.

A. This Court has long held that, under certain circumstances, a notorious crime or criminal trial can create such overwhelming passion in the local community—typically associated with inflammatory publicity—that even a careful voir dire will not suffice to ensure a fair trial, because jurors cannot or will not disclose biases, and because continuing publicity during trial and social pressure to convict can instill prejudice even after voir dire. Under such circumstances, jurors are presumed prejudiced, and venue must be transferred.

The Fifth Circuit correctly held that the community passion aroused by Enron's collapse and the vitriolic media treatment of Skilling and his defense warranted the presumption of prejudice recognized in this Court's precedents. But the court failed to recognize that the presumption, once it arises, cannot be rebutted through voir dire, because the very facts that give rise to the presumption also undermine the ability of voir dire to identify jurors who are—and will remain—impartial. The court thus erred in allowing the Government to rebut the presumption.

B. Even if the presumption can be rebutted in certain limited circumstances, the court erred in holding that the Government rebutted it here. To rebut the presumption, the Government would have to prove beyond a reasonable doubt that each presumptively prejudiced juror was not, in fact, prejudiced. Neither court below applied that standard, and the Government did not meet it. Nor could it meet any other standard of rebuttal on this record. The truncated voir dire, with no individual questioning, did almost nothing to weed out prejudices exposed by screening questionnaires returned by potential jurors. The seated jurors admitted to many contacts with the facts of the case and prejudicial opinions about Skilling, including several jurors who prejudged his guilt. Far from rebutting the presumption of prejudice, the record below affirmatively confirmed it.

The decision to try Skilling in Houston is indefensible. Criminal Rule 21 exists to enable courts to transfer cases to federal districts—including in other states—untainted by passion, prejudice, and publicity when common sense warrants it, and when the Constitution requires it. There was no legitimate justification for not transferring the case to any of several identified venues where jurors could be presumed impartial, instead of the opposite.

II. Skilling not only was tried by jurors drawn from a community passionately committed to convicting him, but he was prosecuted under a vague statute that virtually ensured jurors would vindicate that objective.

A. Section 1346 is an unconstitutionally vague statute. A federal criminal statute must define the conduct it proscribes so that ordinary persons have notice of what is prohibited, and prosecutors are constrained in what they can prosecute. But everyone agrees that § 1346 on its face says nothing about the conduct it proscribes. To identify its meaning, one must consult almost two decades worth of Federal Reports, searching for cases describing or enforcing the judicially-created crime of honest-services fraud, before this Court rejected them all as exceeding the judicial function in *McNally v. U.S.*, 483 U.S. 350 (1987). But those cases reflect only the same morass of conflict and confusion that, in part, led this Court to require that Congress define the crime clearly in the first place. Congress did not do so. And it is beyond the judicial function to identify, through common-law exegesis of pre-*McNally* precedents, the crime that Congress failed to define.

B. If this Court were inclined to complete Congress's work and define the conduct criminalized by § 1346, it should limit the statute to bribes and kickbacks—the one category of conduct unambiguously prohibited in pre-*McNally* caselaw. The category of self-dealing urged by the Government, by contrast, appeared only in a handful of cases and was poorly defined. One feature common to such cases, however, is that they involved conduct that was or could have been prosecuted as money or property fraud. There thus was (and is) no reason to include such cases within the ambit of § 1346—unlike bribes and kickbacks, which normally do not constitute money or property fraud, and thus *did* require separate statutory prohibition.

C. Finally, if the Court does read self-dealing into the statute, it should confirm that acts taken in pursuit of the normal compensation incentives offered by the employer to incentivize performance do not constitute the kind of self-dealing criminalized by the statute. Every pre-*McNally* case held that pursuit of "private gain"—what the Government now apparently describes as "undisclosed personal conflicting financial interests"—was a necessary precondition for honest-services fraud. But *no* case held that such private gain included normal compensation incentives established by (and known to) the employer. And because every employee—in the private sector at least—acts in pursuit of compensation incentives all the time, including compensation incentives within the concept of private gain would render that important limiting principle no limitation at all.

D. Because the Government does not argue that Skilling acted in pursuit of any personal financial interest apart from his normal compensation incentives—and indeed concedes that he always sought to *benefit* Enron—Skilling's honest-services fraud convictions cannot stand.

## ARGUMENT

### I. SKILLING'S CONVICTIONS SHOULD BE REVERSED BECAUSE PERVASIVE COMMUNITY BIAS AND INFLAMMATORY PUBLICITY INVADED HIS TRIAL

Applying a long line of this Court's precedents, the court of appeals correctly held that, given the inflammatory pretrial publicity and nearly unprecedented community passion aroused by Enron's collapse, the trial court erred in refusing to apply a "presumption of prejudice" in determining whether jurors in the Houston venue could be impartial. PA56a-60a. The court held that Skilling had "demonstrate[d] an extreme situation of inflammatory pretrial publicity that literally saturated the community in which his trial was held." PA55a (quotation omitted). The prejudice "came from more than just pretrial publicity," the court emphasized, "but also from the sheer number of victims" of Enron's collapse. PA58a. Because the "collapse of Enron affected countless people in the Houston area," the community was infused with "non-media prejudice." *Id.* The recusal of the entire local U.S. Attorney's Office demonstrates the breadth and depth of Enron's contacts with the community, and of the pain and anger engendered by its collapse.

As elaborated in greater detail above, *see supra* at 4-12, the community passion surrounding Skilling's prosecution was as dramatic as any in U.S. criminal trial history. If a presumption of juror prejudice applies in any case, it had to apply here, as the Fifth Circuit recognized. PA56a.[4] And if an exercise of the court's power to transfer cases within the federal system to escape such prejudice was warranted in any case, it was this one. Under the circumstances, there was no valid justification for refusing to transfer venue to one of several locales untainted by pervasive community hostility and media vitriol, from which no juror here could escape. *Compare, e.g.*, JA417a-429a (Houston phone-poll responses concerning knowledge and opinions of Skilling) *with id.* at 493a-551a (same for Atlanta); *see* JA621a-26a (analyzing similar data for Phoenix, Denver, and Atlanta).

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[4] The Government argued at the certiorari stage that the Fifth Circuit erred in holding that a presumption of prejudice arose, and therefore that the case does not properly present the question whether the presumption is rebuttable. "In granting certiorari," however, this Court "necessarily considered and rejected that contention as a basis for denying review." *U.S. v. Williams*, 504 U.S. 36, 40 (1992). The Government's contention that no presumption arose here is wholly untenable in any event. *See* Pet. Cert. Reply 6-9; Pet. C.A. Reply 97-118.

The Fifth Circuit held, however, that the district court did not err in refusing to transfer venue. It held (a) that the presumption of prejudice among Houston jurors *could* be rebutted, and (b) that the Government *did* rebut the presumption, by showing "from the *voir dire* that an impartial jury was actually impanelled." PA55a (quotation omitted). Both holdings were wrong.

### A. When A Presumption Of Prejudice Arises, It Cannot Be Rebutted Through Voir Dire

#### 1. *This Court's Precedents Have Consistently Held That The Presumption Of Prejudice Cannot Be Rebutted Through Voir Dire*

This Court has long and consistently held that when the community from which jurors are drawn is sufficiently poisoned either by adverse publicity, or by the effects of the very events at issue, or both, a presumption of prejudice among potential jurors arises that requires a change of venue. In those circumstances, voir dire cannot perform its usual function of securing a fair and impartial jury. *See Mu'Min v. Virginia*, 500 U.S. 415, 429-30 (1991); *Patton v. Yount*, 467 U.S. 1025, 1031-33, 1040 (1984); *Murphy v. Florida*, 421 U.S. 794, 799 (1975); *Sheppard v. Maxwell*, 384 U.S. 333, 362-63 (1966);

*Estes v. Texas*, 381 U.S. 532, 550-51 (1965); *Rideau v. Louisiana*, 373 U.S. 723, 726-27 (1963); *Irvin v. Dowd*, 366 U.S. 717, 725-28 (1961).

In *Irvin*, defendant was charged with six murders in a small Indiana town, and police press releases announcing Irvin's confession were "intensively publicized." 366 U.S. at 719-20. Although each juror gave assurances of fairness to the trial court in voir dire, this Court examined the "popular news media" surrounding the trial and the four-week, 2,738-page voir dire record to test whether these assurances were legally adequate. *Id.* at 720, 724-28. The Court concluded they were not. The "build-up of prejudice" in the media was "clear and convincing"; the jury pool was overrun with scores of jurors with disqualifying biases; and eight seated jurors came to voir dire believing Irvin was guilty. *Id.* at 725-27. Even though those jurors later promised they could be fair, the Court held their statements could not be believed under the circumstances. *Id.* at 727.

While *Irvin* may be understood as a case addressing the actual prejudices of a particular jury, the Court generalized the presumed prejudice rule in a trilogy of cases starting with *Rideau*. In that case, the Court held that "only a change of venue was constitutionally sufficient" to ensure "an impartial jury," because the jurors' community "had been exposed repeatedly and in depth to the prejudicial pretrial publicity there involved." *Groppi v. Wisconsin*, 400 U.S. 505, 510-11 (1971) (describing *Rideau*). The defendant in *Rideau* gave a filmed confession to murder, which was broadcast on local television stations. 373 U.S. at 723-25. This Court presumed potential jurors were prejudiced by the publicity, and therefore reversed the convictions "without pausing to examine a particularized transcript of the *voir dire*" to see whether it actually produced impartial jurors. *Id.* at 727. The Court did so even though voir dire showed that only three of the 12 jurors had seen the broadcast; none of the three "testified to holding opinions of [defendant's] guilt"; and all three testified they could "give the defendant the presumption of innocence" and "base their decision solely on the evidence." *Id.* at 731-32 (Clark, J., dissenting). As the Court explained: "*Any* subsequent court proceedings in a community so pervasively exposed to such a spectacle could be but a hollow formality." *Id.* at 726.

The Court again followed a categorical approach in *Estes*, which involved a defendant charged with financial frauds. His case attracted intense media scrutiny: press coverage spanned eleven volumes of the court record; a disruptive televised pretrial hearing was seen by much of the venire; and press coverage continued during trial. 381 U.S. at 534-38. This Court reversed the convictions. Although "there was nothing so dramatic as the home-viewed confession" in *Rideau*, the Court explained, the jury pool had been "bombard[ed]" with publicity about the case and Estes had been subjected to "minute electronic scrutiny." *Id.* at 538. The state, like the Government here, argued Estes could point to no "isolatable prejudice" among jurors or at trial, and that any prejudice was "hypothetical." *Id.* at 541-42. The Court disagreed, holding that the case was one "in which a showing of actual prejudice is not a prerequisite to reversal." *Id.* at 542.

In the cases cited in *Estes* where actual prejudice was not required, the Court employed a per se rule of reversal even though it was *possible* that the factfinders in each case were, in fact, impartial.[5] The Court in these cases "departed from" its approach of "careful[ly] examin[ing] the facts in order to determine whether prejudice resulted." *Estes*, 381 U.S. at 543-44. The Court instead adopted *per se* reversal rules in these cases because the right to impartial adjudication is so fundamental, the existence of prejudice to that right in such circumstances is so "hard to evaluate," and the "appearance of justice" is so important. *Id.* at 542-45.

The Court applied the categorical approach again in *Sheppard*. There, the Cleveland media launched "editorial artillery" against a doctor accused of murdering his wife. 384 U.S. at 335-42. At trial, reporters were allowed to sit inside the bar and interfere with Sheppard's defense; the media wrote articles critical of his defense to which jurors were exposed; and the jurors' identities were published. *Id.* at 342-49. This Court held that such circumstances required reversal, again without regard to proof of actual juror prejudice: "Since the state trial judge did not fulfill his duty to protect Sheppard from the *inherently* prejudicial publicity which *saturated the community* and to control disruptive influences in the courtroom," *id.* at 363 (emphasis added), the Court granted Sheppard's habeas petition without inquiring into any individual juror's bias, and despite juror assurances of impartiality, *id.* at 351-52.

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[5] *See Tumey v. Ohio*, 273 U.S. 510, 523-32 (1927) (judge with even "slightest pecuniary interest" in case may not hear it); *In Re Murchison*, 349 U.S. 133, 136, 140 (1955) (judge may not serve in prosecutorial role as it might cloud impartiality, without showing of actual bias); *Turner v. Louisiana*, 379 U.S. 466, 471-74 (1963) (reversing conviction where sheriff deputies who served as prosecution witnesses interacted with sequestered jurors, without showing of actual prejudice). The Court has followed this approach in numerous other cases. *E.g.*, *Gomez v. U.S.*, 490 U.S. 861, 876 (1989); *Parker v. Gladden*, 385 U.S. 363, 364-65 (1966); *Leonard v. U.S.*, 378 U.S. 544, 544-45 (1960); *Marshall v. U.S.*, 360 U.S. 310, 312-13 (1959).

Subsequent decisions have consistently read the foregoing precedents as establishing a *per se* rule of transfer or reversal where the community passion or trial taint is severe enough to warrant a presumption of juror prejudice. Most recently, the Court in *U.S. v. Gonzalez-Lopez*, 548 U.S. 140 (2006), confirmed that exposure to prejudicial publicity "require[s] reversal of the conviction because the effect of the violation cannot be ascertained." *Id.* at 149 n.4; *see Mu'Min*, 500 U.S. at 429 (when a "presumption of prejudice in a community" arises from the "wave of public passion" surrounding events of trial, "the jurors' claims that they can be impartial should not be believed"); *Vasquez v. Hillery*, 474 U.S. 254, 263 (1986) ("when a petit jury has been ... exposed to prejudicial publicity, we have required reversal of the conviction because the effect of the violation cannot be ascertained"); *Patton*, 467 U.S. at 1031, 1038 & n.13 (while voir dire "usually identifies bias," in certain situations it is "inadequate," because prejudice can be such that "jurors' claims that they can be impartial should not be believed").

Conversely, in *no* case has this Court indicated that, where community passion is severe enough to raise doubts about the impartiality of jurors drawn from that community, those doubts can be overcome merely by trusting the answers given in voir dire. The Court's decisions uniformly hold the opposite.

### 2. *Voir Dire Cannot Ensure An Impartial Jury When Community Passion Is Sufficiently Intense*

This Court's cases holding that the presumption of prejudice cannot be rebutted through voir dire rest on the premise that "the community and media reaction" is "so hostile and so pervasive as to make it apparent that even the most careful *voir dire* process would be unable to assure an impartial jury." *Flamer v. Delaware*, 68 F.3d 736, 754 (3d Cir. 1995) (Alito, J.) (en banc) (quotation omitted). That is, when "adverse pretrial publicity" combines with the "added pressure" of a "huge wave of ... public passion" to create an "atmosphere corruptive of the trial process," this Court "will presume a fair trial could not be held, nor an impartial jury assembled." *Mu'Min*, 500 U.S. at 448-50 (Kennedy, J., dissenting).

This Court's precedents recognize several reasons why even a careful voir dire cannot ensure an impartial jury when the community is so thoroughly soaked with hostility and prejudicial publicity. First, potential jurors in such circumstances can become infused with biases they cannot recognize or will not disclose. *See Estes*, 381 U.S. at 545; *Irvin*, 366 U.S. at 727-28. A "juror may have an interest in concealing his own bias," or "may be unaware of it." *Smith v. Phillips*, 455 U.S. 209, 221-22 (1982) (O'Connor, J., concurring); *see Miller-El v. Dretke*, 545 U.S. 231, 267-68 (2005) (Breyer, J., concurring); *Pennekamp v. Florida*, 328 U.S. 331, 359 (1946) (Frankfurter, J., concurring). And the "psychological impact" of requiring each potential juror to declare his fairness "before [his] fellows" can engender bias, provoke false assurances, or result in sincere expressions of impartiality that are fleeting at best. *Irvin*, 366 U.S. at 728; *see U.S. v. Dellinger*, 472 F.2d 340, 375 (7th Cir. 1972) ("natural human pride" may compel juror to assert his fairness).[6]

Second, even if a juror honestly believes he can objectively hear the evidence before trial, he may come to fear "return[ing] to his neighbors" with anything other than a guilty verdict. *Estes*, 381 U.S. at 545; *see Turner*, 379 U.S. at 472. As the trial court warned jurors here, it "would take courage" for them to acquit. R:14595.

Finally, when pervasive inflammatory publicity continues throughout trial—especially where, as here, the court admits jurors will be exposed to it—jurors who truthfully profess impartiality at voir dire may have their fairness and judgment impaired by the outside media influences. *See Sheppard*, 373 U.S. at 363.

A wealth of empirical data confirms the premises that animate the presumption of prejudice. Scholars have demonstrated the danger of "conformity prejudice," i.e., the fear of community disapproval for rendering an unpopular verdict. *See* Vidmar, *Case Studies of Pre-and Midtrial Prejudice in Criminal and Civil Litigation*, 26 L. & Hum. Behav. 73, 81-82 (2002). They have also exposed the inability of voir dire to weed out jurors biased by adverse publicity,[7] even with judicial admonitions to ignore such publicity (which tend to exacerbate the problem).[8]

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[6] The trial record here included substantial evidence showing the strong likelihood of undetectable prejudice among potential Houston jurors. JA379a-88a, 634a-37a, 654a, 692a-93a, 779a-80a, 799a; R2800-08, 13829.

[7] Sue et al., *Authoritarianism, Pretrial Publicity, and Awareness of Bias in Simulated Jurors*, 37 Psychol. Reps. 1299, 1301 (1975) (jurors who claimed they could disregard publicity

Given the problem of unrecognized or undisclosed juror prejudice, the per se transfer/reversal rule articulated in this Court's precedents cannot be seriously questioned. And cases in which the Court held that the rule did not apply—because the presumption did not arise—only confirm the importance of applying the rule here, because those cases involved far less inflammatory publicity, no sense that the entire community had been victimized by defendant's conduct, and no showing of bias in the venire and among seated jurors remotely comparable to Skilling's showing here.[9] The cases also involved *state*

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were far more likely to convict than jurors not exposed); Kerr et al., *On the Effectiveness of Voir Dire in Criminal Cases with Prejudicial Pretrial Publicity*, 40 Am. U.L. Rev. 665, 695 (1991) (jurors who claimed they could be impartial after being exposed to publicity were as likely to convict as jurors who doubted impartiality); Dexter et al., *A Test of Voir Dire as a Remedy for the Prejudicial Effects of Pretrial Publicity*, 22 J. Applied Soc. Psychol. 819, 839 (1992) ("publicity increased perceptions of defendant culpability and a proposed remedy, extended voir dire, failed to qualify the effect of pretrial publicity"); Studebaker et al., *Pretrial Publicity*, 3 Psychol. Pub. Pol'y & L. 428, 449 (1997).

[8] *E.g.*, Kramer et al., *Pretrial Publicity, Judicial Remedies, and Jury Bias*, 14 L. & Hum. Behav. 409, 430 (1990); Minow & Cate, *Who Is An Impartial Juror in an Age of Mass Media?*, 40 Am. U.L. Rev. 631, 648 (1991).

[9] *See Mu'Min*, 500 U.S. at 418-21 (defendant submitted 47 articles in support of venue motion; no actual juror had formed opinion of defendant's guilt based on publicity); *Patton*, 467 U.S. at 1032-33 (news coverage of case had dissipated by time of trial and "community sentiment had softened"); *Dobbert v. Florida*, 432 U.S. 282, 302-03 (1977) (defendant did not exercise all peremptory challenges; pointed to "no specific portions of

court prosecutions and procedures, with which the Court has much less authority to interfere. *See infra* at 34.

### 3. *A Per Se Venue-Transfer Rule Would Not Be Costly To The Judicial System*

Reaffirmance of the rule requiring transfer or reversal when a presumption of prejudice arises would secure the fundamental right to an impartial jury without imposing any substantial cost on the judicial system. Most federal appellate courts and state supreme courts have long held that the presumption is irrebuttable when it arises, *see* Pet. 30-33, and there is no evidence that either the state or the federal systems have suffered as a result. Indeed, the presumption has been invoked by the lower federal courts to transfer venue or reverse convictions in only approximately 20 cases in the 50 years since *Irvin*.[10]

Unlike evidentiary or other rulings made in the heat of trial, venue motions typically are made pretrial, when there is time for sober reflection. Nor does changing venue affect the trial's truth-seeking function, like the exclusion of evidence—to the contrary, by eliminating inevitable prejudice, changing venue encourages more accurate results.

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record" to show why prejudice should be presumed); *Murphy*, 421 U.S. at 802, 801 (most articles about defendant appeared seven months before trial and were factual; jurors had only vague recollection of publicity, believed it to be irrelevant, and expressed no colorable indicia of bias; only one equivocal statement in voir dire exhibited bias).

[10] Pet. C.A. Reply 88-89 n.33 (collecting cases); *see Daniels v. Woodford*, 428 F.3d 1181, 1210-12 (9th Cir. 2005); *U.S. v. Agriprocessors, Inc.*, 2009 WL 2848860 (N.D. Iowa 2009).

Requiring transfer when the presumption arises in federal cases is especially straightforward. Such cases can easily be transferred within the unitary federal system to venues unaffected by the events, publicity, and passions of the case. And to the extent state systems may lack similar geographic or procedural flexibility, the concern has no bearing in federal cases like this one, where the authority to transfer venue is controlled not only by the Constitution, but also by Federal Criminal Rule 21 and the Court's inherent supervisory power. This Court "enjoy[s] more latitude in setting standards" in federal courts "under [its] supervisory power" than in "interpreting the provisions of the Fourteenth Amendment with respect to" procedures used in state courts. *Mu'Min*, 500 U.S. at 422, 424; *see Marshall*, 360 U.S. at 312-13 (invoking inherent power in reversing conviction where jurors were exposed to prejudicial publicity but promised they could be fair); *Murphy*, 421 U.S. at 804 (Burger, C.J., concurring) ("I would not hesitate to reverse petitioner's conviction in the exercise of our supervisory power, were this a federal case."); *Rideau*, 373 U.S. at 728-29 (Clark, J., dissenting) (similar).

### B. Even If The Presumption Of Prejudice Were Rebuttable, The Fifth Circuit Erred In Concluding The Government Rebutted It Here

1. If the presumption of prejudice is rebuttable under the circumstances of this case or any other, the Government should be required to prove beyond a reasonable doubt that no seated juror was actually affected by media and community bias. *See Chapman v. California*, 386 U.S. 18, 24 (1967); Fed. R. Crim. P. 52(a).

2. Proving beyond a reasonable doubt that no juror was prejudiced is an exacting burden, and one the Government did not satisfy here. The Fifth Circuit has suggested, for example, that "a showing that none of the twelve jurors empanelled had ever been exposed, first or second hand, to the inflammatory publicity, would probably suffice." *Mayola v. Alabama*, 623 F.2d 992, 1001 (5th Cir. 1980); *see U.S. v. Chagra*, 669 F.2d 241, 252 (5th Cir. 1982) (11 "jurors knew nothing about this case" and the twelfth had only "minimal contact").

The Government here made nowhere close to such a showing. To the contrary, as shown above, more than half of the seated jurors admitted to blatantly prejudicial facts and opinions, including: nine who had been exposed to publicity about the case, nine who had a personal connection with Enron, three who had admittedly prejudged the defendants, three who confessed that they were angry, one who told co-workers she very much wanted to get on Skilling's jury, and one who thought he owned Enron stock (and thus was a *direct victim* of Skilling's conduct on the Government's theory). *Supra* at 12-15.

Of all the jurors, Juror 11—*USA Today*'s "Look out, defense" juror—expressed the most obvious bias.[11] The list of his cartoonishly prejudicial commentary on the case and on Skilling, *see supra* at 15-

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[11] The Fifth Circuit declined to consider jurors other than Juror 11 because Skilling did not specifically challenge each individually for cause (as he did Juror 11). PA64a. But Skilling *did* challenge the entire jury, objected to seven jurors specifically, and sought additional peremptories and voir dire. *Supra* at 16. In any event, if a presumption applied, then the burden was on the *Government* to prove the *lack* of prejudice, not on Skilling to prove the prejudice required for cause dismissal.

16, would compel dismissal in any rational voir dire process even absent a presumption. Yet he was allowed to serve.

Notably, before trial the Government itself argued that comments much less prejudicial than those made by Juror 11 and his peers would require dismissal. In successfully opposing Skilling's motion to transfer venue, the Government argued that a proper voir dire would weed out potentially biased jurors, pointing to numerous jurors who were "properly ...excused for cause" in the prosecution of several Enron and Merrill Lynch executives. R:3275. These included a juror "who stated that he would receive the testimony of either Skilling or Fastow with a 'grain of salt'"; one "who indicated his knowledge of persons who had lost their Enron pensions"; one who "indicat[ed] bias in case in which 'executives are charged'"; one who expressed "sympathies for persons 'hurt' by Enron"; one "who lost substantial money on Enron contracts and who admitted to 'hard time being unbiased'"; and one who had "knowledge of acquaintance's loss of substantial money and the case's 'association with Enron.'" *Id.*

As the Government's venue-transfer opposition recognized, such statements demonstrate the kind of actual bias that precludes a fair trial even *absent* a presumption of prejudice. A fortiori, where a presumption *does* apply, statements like these—and much worse—necessarily preclude rebuttal of the presumption.[12]

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[12] The Government notes that Skilling's jurors also made some non-prejudicial statements and promised fairness, and it asserts that "ambiguous and contradictory" voir dire answers do not establish juror bias, citing *Murphy* and *Patton*. BIO25.

3. The court of appeals held otherwise, erroneously deferring to the district court's findings that jurors were not actually prejudiced. PA62a-68a. Those findings warrant no deference, however, because the district court applied the wrong legal standard in reaching them—i.e., it failed to presume that jurors were prejudiced, and thus to require the Government to affirmatively prove each juror's impartiality. "Historical facts 'found' in the perspective framed by an erroneous legal standard cannot plausibly be expected to furnish the basis for correct conclusions." *Rogers v. Richmond*, 365 U.S. 534, 547 (1961); *see Pullman-Standard v. Swint*, 456 U.S. 273, 292 (1982).

If the court had applied the correct legal standard, the dynamic of voir dire and the nature of the court's inquiry into prejudice would have been completely different. Most important, because the court did not apply the presumption, the court failed to treat the jurors' assurances as inherently unreliable, and thus subject at least to serious skepticism. Instead the court did the opposite, accepting *at face value* jurors' promises of fairness. *See supra* at 11-12. But such statements cannot be trusted when the presumption applies—that is the *whole point* of the presumption. *See, e.g.*, *Mu'Min*, 500 U.S. at 429; *see generally supra* at 30-32.

Further, if the court had presumed prejudice among all potential jurors, it could not have refused to permit probing inquiry into each individual juror's biases. To the contrary, the *Government* would have

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But in those cases the presumption of prejudice *was not triggered*. Where it is, as here, prejudicial statements cannot be simply canceled out by non-prejudicial comments.

been forced to make detailed inquiries of each juror in order to prove each juror's impartiality beyond a reasonable doubt, and of course the defense would have been entitled to pursue similar lines to smoke out concealed or latent prejudices.

None of that happened here. Instead the district court satisfied itself that Skilling failed to prove actual prejudice for little reason other than the court looked jurors "in the eye" and decided to credit their promises of fairness. PA66a-67a. If the presumption of prejudice can be rebutted on that kind of showing, the presumption has no meaning at all.

## II. SKILLING'S CONVICTIONS BASED ON HONEST-SERVICES FRAUD CANNOT STAND

### A. Section 1346 Is Unconstitutionally Vague

A statute violates due process when it is so vague that it does not give "the person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Grayned v. Rockford*, 408 U.S. 104, 108 (1972); *see Giaccio v. Pennsylvania*, 382 U.S. 399, 402-03 (1966); *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939). Section 1346 is just such a statute. It prohibits a scheme to deprive another of "the intangible right of honest services." 18 U.S.C. § 1346. Those spare words "provide[] no clue to the public or the courts as to what conduct is prohibited under the statute." *U.S. v. Handakas*, 286 F.3d 92, 104 (2d Cir. 2002), *overruled in part by U.S. v. Rybicki*, 354 F.3d 124, 144 (2d Cir. 2003); *see U.S. v. Sorich*, 523 F.3d 702, 707 (7th Cir. 2008) (§ 1346 is "amorphous and open-ended"); *U.S. v. Urciuoli*, 513 F.3d 290, 294 (1st Cir. 2008) (§ 1346 "is vague and undefined");

*U.S. v. Brown*, 459 F.3d 509, 520 (5th Cir. 2006) (§ 1346 is a "facially vague criminal statute"); *U.S. v. Murphy*, 323 F.3d 102, 116 (3d Cir. 2003) ("the plain language of § 1346 provides little guidance as to the conduct it prohibits").

Section 1346's reference to "*the* intangible right of honest services" and its legislative history indicate that Congress believed it was codifying some specific, preexisting right whose meaning could be easily discerned from pre-*McNally* lower court decisions. *See Cleveland v. U.S.*, 531 U.S. 12, 19-20 (2000). But Congress was wrong. Certain principles in the pre-*McNally* caselaw approach coherence, but only to the most discriminating lawyer or judge, and overall the pre-*McNally* caselaw is a hodgepodge of oft-conflicting holdings, statements, and dicta. Reading those cases into § 1346 by the common-law method thus does nothing more than substitute a multitude of vague and inconsistent standards for the facially meaningless phrase that Congress plucked out of the caselaw.[13]

### 1. *Pre-*McNally *Caselaw Was Hopelessly Unclear And Conflicting*

Contrary to the Government's premise that the constitutionally required "fair notice" of § 1346's meaning can be found somewhere in the pages of the Federal Reports before 1987, those pages reveal only conflict and confusion as to what conduct constituted the made-up crime of honest-services fraud. The disagreements included:

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[13] *See, e.g.*, *U.S. v. Kwiat*, 817 F.2d 440, 443 (7th Cir. 1987) ("honest and diligent services"); *U.S. v. Conner*, 752 F.2d 566, 572 (11th Cir. 1985) ("fraud which is perpetrated through a breach of the fiduciary duty"). *U.S. v. Boffa*, 688 F.2d 919, 931 (3d Cir. 1982) ("loyal, faithful, and honest services"); *U.S. v. Bohonus*, 628 F.2d 1167, 1172 (9th Cir. 1980) ("honest services" and "right to have ... business conducted honestly"); *U.S. v. Bryza*, 522 F.2d 414, 422 (7th Cir. 1975) ("loyal services"); *U.S. v. Mandel*, 591 F.2d 1347, 1362 (4th Cir. 1979) ("honest and faithful Government").

- What source of law courts and potential defendants should have relied on to identify the illegal conduct. *See U.S. v. Lemire*, 720 F.2d 1327, 1336 (D.C. Cir. 1983) (employment relationship "that imposes discretion"); *Boffa*, 688 F.2d at 931 (federal labor statute "established, as a matter of federal law, union members' right to the honest and faithful services of union officials"); *U.S. v. Margiotta*, 688 F.2d 108, 124 (2d Cir. 1982) (no need to decide whether federalism considerations require state law duty because state law imposed a fiduciary duty on the defendant); *U.S. v. Ballard*, 663 F.2d 534, 541 (5th Cir. 1981) ("state or federal statute or may arise from the employment relationship itself"); *U.S. v. Von Barta*, 635 F.2d 999, 1007 (2d Cir. 1980) (position of "great trust and considerable power"); *U.S. v. Rabbitt*, 583 F.2d 1014, 1026 (8th Cir. 1978) (finding significant the absence of state law disclosure duty).
- Whether the law required that the defendant contemplate that his actions would cause economic harm to his employer. *Compare Lemire*, 720 F.2d at 1337 (contemplated or foreseeable economic harm required); *Ballard*, 663 F.2d at 541 (no violation where employer was receiving maximum price); *Rabbitt*, 583 F.2d at 1026 (no violation because, *inter alia*, there was no evidence that contracts resulted in "inferior work, greater expense, or any other tangible loss"); *U.S. v. McNeive*, 536 F.2d 1245, 1252 (8th Cir. 1976)

(no violation because, *inter alia*, the city "did not suffer any tangible or pecuniary injury"); *Epstein v. U.S.*, 174 F.2d 754, 768 (6th Cir. 1949) (no violation where corporation purchased at "market prices") *with U.S. v. Price*, 788 F.2d 234, 237 (4th Cir. 1986) ("economic injury need not be shown"); *U.S. v. Silvano*, 812 F.2d 754. 760 (1st Cir. 1987) ("immaterial ...whether the City suffered a financial loss"); *U.S. v. Newman*, 664 F.2d 12, 20 (2d Cir. 1981) (economic harm not required in every case, but assuming the requirement in that case); *U.S. v. Castor*, 558 F.2d 379, 383 (7th Cir. 1977) (same); *U.S. v. Curry*, 681 F.2d 406, 410 (5th Cir. 1982) (no requirement of contemplated loss of money or property, but indictment alleged such a loss); *see also U.S. v. Bush*, 522 F.2d 641, 648 (7th Cir. 1975) (declining to decide question because "pecuniary injury" was established).

- Whether the standards for public sector and private sector cases were the same. *Compare Lemire*, 720 F.2d at 1337 n.13 ("public officials may be held to a higher standard of public trust"); *Ballard*, 663 F.2d at 541 n.17 ("public officials may have a special duty to disclose, based on the public trust, which lowers the standard of materiality"); *U.S. v. Keane*, 522 F.2d 534, 549 (7th Cir. 1975) (distinguishing private sector case on the ground that "this case . . . involves a public official") *with Price*, 788 F.2d at 237 (applying same standard).

- Whether honest-services duties extended only to persons who were taking "official" action. *Compare Bush*, 522 F.2d at 647 (fiduciary duty extended to press secretary who had no official role in awarding contracts) *with Rabbitt*, 583 F.2d at

1026 (no violation because, *inter alia*, legislator "did not, in his official capacity, control the awarding of state contracts").

- Whether use of the fiduciary position was a necessary element. *Compare Lemire*, 720 F.2d at 1335 ("that the fiduciary utilize his trusted position" is required element) *with U.S. v. Bronston*, 658 F.2d 920, 926 (2d Cir. 1981) ("proof that the fiduciary relationship was used or manipulated in some way is not necessary").

Without a consensus on these basic questions, any argument that the statute codified a single, coherent, preexisting conception of honest services—a conception obviously available to ordinary persons from prior caselaw—falls apart completely. "Surely no unambiguous meaning can be assigned to a phrase that has no meaning except what can be distilled from *some* pre-*McNally* cases provided that *other* pre-*McNally* cases are ignored, particularly since the designation of overruled cases that are in and those that are out is itself essentially arbitrary." *Rybicki*, 354 F.3d at 160 (Jacobs, J., dissenting). "Ordinary people cannot be expected to undertake such an analysis; rare is the lawyer who could do it; and no two lawyers could be expected to agree independently on the elements of an offense that must be defined by such a project." *Id.*

### 2. *The Government's History Of § 1346 Prosecutions Proves That The Statute Has No Single, Clear, Coherent Meaning*

The Government's current position that § 1346 has a single, clear meaning is conclusively refuted by the history of its prosecutions, in which it has repeatedly proffered whatever meaning is necessary to prosecute whatever defendant happens to be in the Government's sights:

- While the Government now argues that the statute requires the existence of a fiduciary duty, *Black* GB11-12, it recently argued the opposite, *U.S. v. McGeehan*, 584 F.3d 560, 574 (3d Cir. 2009).
- While the Government now argues that public officials who act for political motives do not commit honest-services fraud, *Weyhrauch* GB45, it recently argued the opposite, *U.S. v. Thompson*, 484 F.3d 877, 878 (7th Cir. 2007).
- While the Government now argues that a person can commit honest-services fraud only for "official action," *Black* GB36-37, it previously argued the opposite, and that *any* workplace misconduct would suffice, *U.S. v. Czubinski*, 106 F.3d 1069, 1077 (1st Cir. 1997).
- While the Government now argues that the honest-services statute itself, and not state law, is the source of any fiduciary duty, *Weyhrauch* GB11-12, it previously argued that a violation of a state law ethical duty is relevant and sufficient evidence of honest-services fraud, *U.S. v. Sawyer*, 85 F.3d 713, 726-27 (1st Cir. 1996).
- While the Government now argues that a defendant's lack of knowledge of his disclosure obligation is relevant in assessing whether he had an intent to deceive, *Weyhrauch* GB48, it recently argued the opposite, *U.S. v. Carbo*, 572 F.3d 112, 116 (3d Cir. 2009).
- And while the Government now argues that the defendant must act to further his personal finan-

cial interest, and that the statute essentially reduces to bribes, kickbacks, and self-dealing, *Weyhrauch* GB41, 45-46, the Government argued *against* exactly these limitations in both the district court and the court of appeals below, U.S. C.A. Br. 80-81 & n.9; R:41327-29.

The foregoing history shows that § 1346 not only fails to provide clear notice of criminalized conduct, but also facilitates opportunistic and arbitrary prosecutions, which implicates the "other principal element of the [vagueness] doctrine": the "requirement that a legislature establish minimal guidelines to govern law enforcement," lest the statute "permit a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections." *Kolendar v. Lawson*, 461 U.S. 352, 358 (1983) (quotations omitted). The point is not whether the Government "applied this discretion wisely or poorly in a particular case," but that § 1346 "is unconstitutional ...because the [Government] enjoys too much discretion in *every* case." *Chicago v. Morales*, 527 U.S. 41, 71 (1999) (Breyer, J., concurring).

### 3. *The Common-Law Method Of Divining Meaning From Pre-*McNally *Precedents Does Not Cure The Statute's Vagueness*

The Government's current theory of the statute is based on the Second Circuit's decision in *Rybicki*, 354 F.3d 124, which sought to distill the pre-*McNally* caselaw into a single, coherent standard. *Rybicki* holds that, at least in the private sector, § 1346 prohibits

> a scheme or artifice to use the mails or wires to enable an officer or employee of a private entity (or a person in a relationship that gives

> rise to a duty of loyalty comparable to that owed by employees to employers) purporting to act for and in the interests of his or her employer (or of the other person to whom a duty of loyalty is owed) secretly to act in his or her or the defendant's own interests instead, accompanied by a material misrepresentation made or omission of information disclosed to the employer or other person.

*Id.* at 141-42. In the Second Circuit's view, reading these elements into § 1346 would cure its facial vagueness. *Id.* at 144. The Government has now endorsed the *Rybicki* standard substantially—but not entirely, *see infra* at 47-48—and has urged its application to public and private sector cases. *Black* GB35-38; *Weyhrauch* GB44.

But even if one considers the *Rybicki* standard logical or functional, it was not actually expressed in *any* pre-*McNally* case as a consensus standard for defining honest-services fraud—and it certainly was not identified as such by any member of the Congress that enacted § 1346. Instead, in the manner of a common-law court, the Second Circuit examined the underlying fact patterns of the pre-*McNally* cases and asked what legal standard could be judicially inscribed into the statute that would be most consistent with the results reached in those cases. 354 F.3d at 138-42.

This Court has never approved that kind of common-law rescue operation of an otherwise vague statute. To the contrary, the Court has made clear that such creativity exceeds the judicial function, because "under our constitutional system ... federal crimes are defined by statute rather than by common law." *U.S. v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 490 (2001).

> It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the government.

*U.S. v. Reese*, 92 U.S. 214, 221 (1876).

The *Rybicki* court sought to draw support for its common-law analysis from *Neder v. U.S.*, 527 U.S. 1, 22-23 (1999). In *Neder*, however, the Court interpreted the term "fraud" to encompass a materiality requirement because there was a clear, preexisting consensus that materiality was an essential element of fraud. In *Rybicki*, by contrast, the Second Circuit created a *new* meaning for honest-services fraud that was not articulated by any court as a consensus position prior to *McNally*. The Second Circuit's approach would be equivalent to incorporating a materiality requirement into a fraud statute not because courts had ever articulated it as a consensus requirement, but because a retrospective examination of the facts of successful prosecutions revealed that, if there had been a materiality requirement, it usually (but not always) would have been satisfied. That is common-law creation, not judicial interpretation. "To limit this statute in the manner now asked for would be to make a new law, not to enforce an old one. This is no part of [the Court's] duty." *Reese*, 92 U.S. at 221.

The fact that *Rybicki*'s methodology cannot transform a vague statute into a clear one is confirmed by the Government's manipulation of *Rybicki*. Rather than accept the product of its common-law methodology by its terms, the Government modifies *Rybicki*, without either admitting that it is doing so or grounding its modifications in any pre-*McNally* caselaw. For example, *Rybicki* states that honest-services fraud can occur only when an employee "purport[s] to act for and in the interests of the employer," but "secretly ...act[s] in his ...own interest[] *instead*." 354 F.3d at 142 (emphasis added). That formulation indicates that an employee who *simultaneously* seeks to further both the employer's interest and his own interest does *not* commit honest-services fraud. The Government's formulation tracks *Rybicki* verbatim, until mysteriously eliminating the term "instead," *Black* GB35-37, suggesting that action to further mutual interests is a federal felony merely so long as the employee's interest is undisclosed. The Government has not cited any pre-*McNally* authority demonstrating a consensus reflecting that important modification.

While that modification would expand the scope of *Rybicki*, the Government also introduces other, limiting refinements to the *Rybicki* standard. For example, it says there is a requirement that the defendant take "official action," *Black* GB36-37, and that "personal interest" does not include a public official's desire to be reelected, *Weyhrauch* GB45. Neither limitation is expressed in *Rybicki*. The only apparent point of these refinements is to gerrymander the statute to exclude the hypotheticals identified in Justice Scalia's dissent in *Sorich v. U.S.*, 129 S.Ct. 1308, 1309 (2009), i.e., the employee who takes sick leave and goes to the ballgame (no official action), the employee who recommends an unqualified friend for employment (no official action), and the politician who votes for a measure that benefits a small minority in order to gain reelection (no personal interest). *Black* GB36-37; *Weyhrauch* GB45-46. These additional acts of statutory manipulation provide the final confirmation—if any were needed—that § 1346 is intolerably and unconstitutionally vague.

### B. Section 1346 Should Be Limited To Acts Taken For Private Gain In The Form Of Bribes Or Kickbacks

If the Court were to engage in the enterprise of constructing the federal crime of honest-services fraud proscribed by § 1346, it should hold that the crime is confined to action taken to obtain private gain from parties other than the defendant's employer—i.e., bribes or kickbacks received from a third party as a quid pro quo for some advantage from the employer. The statute should not be read to encompass the ambiguous, outlier category of "self dealing" cases. *See U.S. v. Granderson*, 511 U.S. 39, 54 (1994) (where the "text, structure, and history fail to establish that the Government's position is unambiguously correct," the Court "appl[ies] the rule of lenity and resolve[s] the ambiguity in [the defendant's] favor").

#### 1. *The Paradigm Cases Prior To* McNally *Involved Only Bribery And Kickbacks*

No party in any of the three honest-services fraud cases before the Court—including the Government—contends that Congress literally intended to inscribe every single pre-*McNally* precedent into § 1346. Indeed, no such approach would have been possible, given the conflicts existing in the caselaw. *Supra* at 39-42. In the Government's words, Congress instead intended to codify only "paradigm cases." *Black* GB29 n.11.

Bribes and kickbacks were *the* paradigm cases. The overwhelming majority of prosecutions for honest-services fraud before *McNally* involved employees who secretly received bribes or kickbacks from third parties in return for taking action that would benefit the third parties. *See Thompson*, 484 F.3d at 884. Thus, "treating Section 1346 as limited to such situations is consistent with its language," *id.*, and gives the statute "real and substantial effect," *Stone v. INS*, 514 U.S. 386, 397 (1995).

### 2. *Limiting § 1346 To Bribery And Kickbacks Would Avoid Redundancy With Money Or Property Fraud*

Defining § 1346 to encompass only bribes and kickbacks also would extend mail and wire fraud to uncovered territory while avoiding redundancy with traditional money or property fraud. In the bribery or kickback context, the employee receives payments not from a deceived employer, but from a third party who has not been deceived. *See McNally*, 483 U.S. at 360-61 (money received as kickback is not State's money). There is thus ordinarily no clear money or property fraud. The real injury to the employer in a bribery or kickback case is the corruption of the employer's decisionmaking process—a harm that occurs without regard to whether the employer loses money or property.

For example, when a state governor accepts a bribe in exchange for support of racetrack legislation, the scheme may actually contemplate that the state and its treasury will be benefitted by the legislation. But the scheme is inherently corrupt because the state has been deprived of the governor's honest judgment on whether such legislation would be in the state's interest. *See Mandel*, 591 F.2d at 1362. Similarly, when a union official awards an unqualified applicant union membership in exchange for money in excess of normal union dues, and passes the normal dues on to the union, the union does not lose any money. But the arrangement is inherently corrupt because the union has been deprived of the officer's honest judgment on who qualifies for membership. *See Price*, 788 F.2d at 237. As these examples illustrate, interpreting the statute to reach bribes and kickbacks gives § 1346 a distinct and important function within the mail- and wire-fraud statutes.

That interpretation would also be consistent with Congress's intent to overturn *McNally*. *See* 134 Cong. Rec. 33,297 (1988) (statement of Rep. Conyers) ("This amendment is intended merely to overturn the *McNally* decision. No other change in the law is intended."). In *McNally*, the Court held that an official involved in a dishonest "kickbacks" scheme, 483 U.S. at 356, could not be prosecuted under the mail-fraud statute, because there was no evidence the scheme deprived the state of any money or property, *id.* at 360-61. Interpreting § 1346 to encompass bribe and kickback schemes would therefore reflect Congress's specific intent to overrule *McNally* itself.

### 3. *Self-Dealing Cases Were Not Paradigmatic Before* McNally *And Are Redundant Of Money Or Property Fraud*

In *Rybicki*, the Second Circuit identified only one fact pattern other than bribery and kickbacks that was prosecuted successfully before *McNally*: so-called "self dealing" cases, where an employee directed business to a third party in which the employee had an undisclosed personal interest. But *Rybicki* identified only *six* cases involving that fact pattern in the private sector, and in three, a defendant's conviction was reversed. 354 F.3d at 140-41. The number of cases fitting this fact pattern in the public sector was also vanishingly small. *See Bush*, 522 F.2d 641; *Keane*, 522 F.2d 534; *Silvano*, 812 F.2d 754. These highly atypical cases have nowhere near the pedigree in pre-*McNally* law the paradigm bribe and kickback cases have. There is thus no basis for reading these outlier cases into § 1346.

What is more, the pre-*McNally* self-dealing cases were effectively money or property fraud cases anyway, and thus did not need to be addressed by a new fraud statute. Unlike bribes and kickbacks, where money or property comes directly from a third party who is not deceived, the money or property in self-dealing cases comes directly from an employer who *has* been deceived. In fact, in many of the pre-*McNally* cases, the success of the prosecutions turned on whether the Government could demonstrate that the employer suffered a money or property loss. *See Epstein*, 174 F.2d at 765 (undisclosed self-dealing is not mail fraud where employer paid fair price); *Lemire*, 720 F.2d at 1337-38 (self-dealing requires proof that defendant contemplated economic harm to employer); *Ballard*, 663 F.2d at 541 (no violation where employer received the maximum price fixed by law); *Bush*, 522 F.2d at 646, 648 (self-dealing scheme deprived public employer of money or property). Because the self-dealing cases collapse almost completely into money or property fraud, there was (and is) no need to extend § 1346 to this already-covered territory.

Finally, unlike accepting bribes and kickbacks, it is not inherently corrupt for an employee to take an action that benefits the employer without disclosing that the employee will also receive a benefit. *Lemire*, 720 F.2d at 1337-78. A mutual benefit is just that—a mutual benefit. While an undisclosed conflict is generally proscribed at common law under agency and trust principles for prophylactic reasons, there is no clear indication Congress intended to treat it as a serious felony—unless the agent actually defrauds the principal out of money or property. The Court should therefore decline to read the amorphous self-dealing cases into § 1346. Instead, the prosecution of self-dealing, when it is corrupt and harmful, can proceed under the traditional money or property fraud statute.[14]

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[14] Confining § 1346 to quid pro quo bribes and kickbacks would also provide something approaching fair notice of what the statute prohibits. An ordinary person consulting pre-*McNally* caselaw to define § 1346 would find *only* bribery and kickbacks clearly included as honest-services fraud. It would be impossible to discern with any certainty whether and when self-dealing was prohibited. And it impossible even now to understand what qualifies as prohibited self-dealing, as Judge Berzon has demonstrated. *U.S. v. Kincaid-Chauncey*, 556 F.3d 923, 947-48 (9th Cir. 2009).

To the extent that the Court wishes to include self-dealing within § 1346's compass, however, it should confine the concept to those narrow circumstances specifically described in prior

### C. At A Minimum, § 1346 Requires The Jury To Find That The Defendant Acted For Private Gain Distinct From The Employer's Regular Compensation Incentives

At the very least, § 1346 should require the jury to find that the defendant acted for private gain—as the Government now apparently concedes. If there is any principle that is clear from the pre-*McNally* cases, it is the requirement of private gain. And that requirement did not then, and does not now, include the very gain the employer explicitly contemplated as compensation for the employee's service.

1. Every pre-*McNally* honest-services case—without exception—involved actions taken by the employee for private gain. An employee who accepts a bribe or a kickback in exchange for official action is, by definition, acting for private gain. And so too is an employee who, at the employer's expense, directs the employer's business to an entity in which he has an undisclosed financial interest.

Prior to *McNally*, at least three circuits expressly announced a requirement of private gain. In *U.S. v. Dixon*, 536 F.2d 1388 (2d Cir. 1976), Judge Friendly cited "abundant authority" from federal courts of appeals holding that "a scheme to use a private fiduci-

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caselaw: self-dealing where the defendant directs money or property to a third party in which he has an undisclosed interest. It should resist the Government's invitation to expand this category to include *any* undisclosed financial conflict. That broader category was not a consensus position pre-*McNally*. And because the statute does not clearly specify the limits of prohibited self-dealing, the rule of lenity compels the narrower understanding. *U.S. v. Santos*, 128 S.Ct. 2020, 2028 (2008).

ary position *to obtain direct pecuniary gain* is within the mail fraud statute." *Id.* at 1399 (emphasis added). His opinion reversed the conviction of a corporate officer who failed to make required disclosures to stockholders, on the ground that he "received no money or property by virtue of the omission." *Id.* at 1400. Distinguishing cases in which the defendant acted "to enhance his private advantage"—"by taking bribes," for example—Judge Friendly concluded that mail fraud requires an "element of corruption" that was "not present" under the circumstances, where the defendant did not act for private gain. *Id.* at 1400-01.

The Sixth and D.C. Circuits similarly enforced a private gain requirement. *U.S. v. Gray*, 790 F.2d 1290, 1295 (6th Cir. 1986) ("the intangible rights theory is anchored upon the defendant's misuse of his public office for personal profit"); *Lemire*, 720 F.2d at 1335 ("[This Court has] required ...that the fiduciary utilize his trusted position to obtain a benefit for himself at the expense of the person whose trust he breaches."). And *no* circuit took the position that honest-services fraud could be established where the defendant did not act for private gain.

Thus, when summarizing the caselaw in *McNally*, this Court correctly described the honest-services cases as establishing that "a public official owes a fiduciary duty to the public, and misuse of his office *for private gain* is a fraud." 483 U.S. at 355 (emphasis added).

While the Government resisted a private-gain requirement in the district and appellate courts here, it has now acknowledged a requirement very close to private gain. As the Government asserted during oral argument in *Weyhrauch*, in pre-*McNally* cases, "the government was after[] personal conflicting financial interests." *Weyhrauch* Oral Arg. Tr. 55; *see Weyhrauch* GB45 (the "core interests that give rise to the divided loyalties are personal financial interests"). The Government has thus abandoned its prior view that *any* action a jury finds to be materially contrary to the employer's interest constitutes honest-services fraud. Its current view is that § 1346 instead requires the jury to find that the defendant took official action to pursue undisclosed personal financial interests in conflict with the employer's. *Black* Oral Arg. Tr. 31, 44-45.

2. Given the accepted approach of construing § 1346 in light of pre-*McNally* caselaw, the statute's private-gain element must also take its meaning from the same body of authority. Thus, while private gain clearly includes bribes and kickbacks, and conceivably could include payments to entities in which the defendant has an interest, it clearly does *not* include employee salary or other normal incentives offered by the employer to promote employee performance. No pre-*McNally* case of which we are aware holds that an employee who acts only pursuant to his normal compensation incentives acts for private gain.

Further, if private gain includes the employee's normal compensation incentives, then the private-gain requirement does little or no work in clarifying and confining the scope of § 1346. In our market economy, private employees and other market actors are *presumed* to act in pursuit of their personal financial interest. Employers count on that behavior in incentivizing performance through salary, benefits, bonuses, stock options, and the like. In that sense, "every salaried employee can be said to work for her own interest while purporting to act in the interests of the employer." *Rybicki*, 354 F.3d at 161 (Jacobs, J., dissenting). Thus, unless the concept of private gain excludes acting to obtain normal compensation incentives, virtually any employee who breaches a material fiduciary duty could be deemed an honest-services felon.

Compensation incentives also constitute the employer's method for aligning an employee's interest with its own. Employee action that is directed to increasing compensation therefore furthers an interest that the employer has chosen to establish. And the employee's compensation incentives are of course known to the employer who creates them. As such, action taken in pursuit of increased compensation fails to satisfy a basic element of honest-services fraud as defined by the Government: that the employee take official action in pursuit of undisclosed financial interests that conflict with the employer's interests.

In *Thompson*, 484 F.3d at 884, the Seventh Circuit recognized that an employee who acts to increase her salary does not act for private gain: "It would stretch the ordinary understanding of language to call a public employee's regular compensation, approved through above-board channels, a kind of 'private gain'." *Id.* at 884. Nor is there any appellate decision, before or after *McNally*, "holding that an increase in official salary ... is the sort of private gain that makes an act criminal under § 1341 and 1346." *Id.* Finally, the court emphasized, "the Rule of Lenity counsels us not to read criminal statutes for everything they can be worth." *Id.* The court therefore correctly held that "an increase in salary for doing what one's superiors deem a good job" is not "a 'private benefit' for the purpose of § 1346." *Id.*

### D. Skilling's Honest-Services Conviction Must Be Reversed

Under the foregoing legal principles, Skilling's convictions—all of which rested at least in part on the honest-services theory the Government has now abandoned, *see* Pet. Cert. Reply 4-5; Pet. C.A. Reply Br. 29-46—must be reversed. That is true, of course, if the Court invalidates § 1346 as unconstitutionally vague. But it is also true if the Court adopts any of the limiting principles discussed above.

The Government's theory is not that Skilling received bribes or kickbacks, or that he directed money or property to an entity in which he had a personal interest, or indeed that he acted for *any* private gain that was distinct from his ordinary compensation incentives. The Government openly conceded at trial that Skilling stole no money from Enron, that the case against Skilling was not about "greed," that Skilling sought to pursue Enron's "best interests," and that every act for which he was prosecuted was undertaken for the purpose of protecting Enron and promoting its share value. Pet. 3-4. The Government proceeded on the theory that Skilling nonetheless committed honest-services fraud simply because he took on too much risk for the long-term good of Enron, and improperly touted the company. Pet. 3-5. It did not seek an instruction requiring jurors to find that Skilling acted pursuant to undisclosed personal financial interests in conflict with Enron's. Instead the Government urged the jury to send Skilling to prison simply because he breached his "duty to do [his] job and do it appropriately." Pet. 4. That theory of honest-services fraud has no grounding in pre-*McNally* caselaw, and is totally at odds with the Government's current conception of the statute.

The implications of that theory, moreover, extend far beyond what Congress reasonably could have intended when it enacted § 1346 to overrule *McNally*, a public-official kickback case. In the private sector, corporate officers are expected to take business risks and cheerlead for their enterprises. A rule that criminalizes every business decision that seems imprudent to prosecutors or lay jurors in hindsight—but does not involve the corrupt pursuit of private gain—would force officers to proceed at their peril in making everyday business judgments. Fortunately, the theory of honest-services fraud the Government advanced below is not the law, as the Government now recognizes. Skilling's convictions must be reversed.

## CONCLUSION

The decision below should be reversed, and the case remanded for a new trial.

Respectfully submitted,

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December 11, 2009

# APPENDIX

## STATUTORY APPENDIX

The Fifth Amendment to the United States Constitution provides in relevant part:

> No person shall ... be deprived of life, liberty, or property, without due process of law ....

U.S. Const. amend. V.

The Sixth Amendment to the United States Constitution provides in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ....

U.S. Const. amend. VI.

Section 1343 of Title 18 of the United States Code provides in relevant part:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. § 1343.

Section 1346 of Title 18 of the United States Code provides:

> For the purposes of this chapter, the term

> "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

18 U.S.C. § 1346.

# RESPONDENT'S BRIEF

87005

Supreme Court, U.S.
FILED

JAN 26 2010

OFFICE OF THE CLERK

No. 08-1394

# In the Supreme Court of the United States

JEFFREY K. SKILLING, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON WRIT OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE FIFTH CIRCUIT*

## BRIEF FOR THE UNITED STATES

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## QUESTIONS PRESENTED

1. Whether, to convict petitioner of conspiring to commit wire fraud by depriving his employer and its shareholders of the right to petitioner's honest services (18 U.S.C. 1343, 1346), the government was required to prove that petitioner intended to obtain some private gain.

2. Whether 18 U.S.C. 1346 is unconstitutionally vague.

3. Whether the district court erred in denying petitioner's motions for a change of venue.

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# In the Supreme Court of the United States

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No. 08-1394

JEFFREY K. SKILLING, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON WRIT OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE FIFTH CIRCUIT*

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## BRIEF FOR THE UNITED STATES

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### OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-135a) is reported at 554 F.3d 529.

### JURISDICTION

The judgment of the court of appeals was entered on January 6, 2009. A petition for rehearing was denied on February 10, 2009 (Pet. App. 136a-138a). The petition for a writ of certiorari was filed on May 11, 2009. The petition for a writ of certiorari was granted on October 13, 1999. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

### STATEMENT

Following a jury trial in the United States District Court for the Southern District of Texas, petitioner was convicted of one count of conspiracy to commit securities fraud and wire fraud, in violation of 18 U.S.C. 371 (Count 1); 12 counts of securities fraud, in violation of 15 U.S.C. 78j(b) and 78ff, 17 C.F.R. 240.10b-5, and 18 U.S.C. 2 (Counts 2, 14, 16-20, 22-26); five counts of making false representations to auditors, in violation of 15 U.S.C. 78j(b) and 78ff, and 18 U.S.C. 2 (Counts 31-32, 34-36); and one count of insider trading, in violation of 15 U.S.C. 78j(b) and 78ff, 17 C.F.R. 240.10b-5, and 18 U.S.C. 2 (Count 51). J.A. 1107a-1113a. The court of appeals affirmed petitioner's convictions but vacated his sentence and remanded for resentencing. Pet. App. 1a-135a.

1. Petitioner was the president, chief operating officer, and, for several months in 2001, the chief executive officer of Enron Corporation. Between 1999 and the end of 2001, petitioner orchestrated a massive scheme to deceive Enron's shareholders, federal regulators, and the investing public about the company's financial condition and performance. Pet. App. 1a-18a.

a. Enron was formed by the merger of two natural gas pipeline companies in 1985. R. 15066. It enjoyed steady growth through the 1990s due largely to earnings from energy trading in the company's wholesale division. R. 15228. By early 1999, Enron's stock was trading at about 25 times its per-share earnings. R. 17227. Petitioner, whose compensation was tied directly to the value of the company's stock, wished to increase the share price even further. But petitioner also knew that revenue from Enron's existing trading business could not support a higher price-to-earnings multiple (or P/E ratio); as he told his managers, "[t]here ain't no more 'E' in the earnings." R. 17228. Petitioner therefore sought to increase the P/E ratio by convincing the market that Enron was poised for steady and significant growth.

As part of that strategy, petitioner portrayed as bright and promising the prospects of two newer businesses: Enron Energy Services (EES), which sold energy at retail, and Enron Broadband Services (EBS), which represented Enron's effort to enter the telecommunications industry. R. 15226-15229, 17229-17232, 19920-19921. Instead of showing promising results, however, EES and EBS suffered substantial losses. By early 2001, Enron internally predicted that EES would eventually lose more than $1 billion as a result of deteriorating conditions in the California utilities markets. R. 19398. Similarly, EBS lost money in every quarter that it existed. R. 17215, 17232-17233, 17239-17241.

Petitioner responded by systematically concealing the financial condition of EES and EBS from investors. In March 2001, instead of truthfully disclosing EES's poor first quarter numbers, petitioner hastily arranged a "reorganization" of that business two days before the quarter ended. R. 19979-19982. The sole purpose of the reorganization was to hide the losses in EES by shifting all of its money-losing components into the larger balance sheet of Enron's wholesale division. R. 15556, 19446-19448, 19775-19781. The head of EES later testified that petitioner's approval of the reorganization was the worst corporate conduct he had ever experienced, R. 20257, and said of the meeting at which it took place, "I wish on my kids' lives I would have stepped up from that table and walked away." R. 20338.

As a result of the reorganization scheme, Enron reported first quarter earnings for EES of $40 million, when in fact the business should have recognized a $350 million loss. R. 19988-19989. In the second quarter, Enron announced that EES's earnings had increased 30% to $60 million, although in reality EES had lost

$495 million by that time. R. 15567-15568, 15572-15573; Gov't C.A. Br. 17. On analyst calls, petitioner assured investors that "first quarter results were great," that EES "had an outstanding second quarter," and that the reason for the shift of certain aspects of EES's business to the wholesale division was "to get more efficiency out of management." *Id.* 33; R. 15579.

Petitioner engaged in a similar deception to conceal the failure of EBS. He set earnings targets at numbers that its executives told him they could not meet and refused to change those targets when senior management warned of shortfalls. R. 17281-17283. To meet the inflated targets, EBS "monetized," or sold as securities, the projected future revenue from its contracts—an accounting trick that one senior manager described as "[o]ne more hit of crack cocaine" because it provided an artificial short-term jolt to the company's earnings. R. 17359, 20667-20668. As with EES, petitioner misrepresented the true condition of EBS. At an analyst conference in January 2001, petitioner told investors that EBS was a "uniquely strong franchise[] with sustainable high earnings power," even though he had learned from EBS's CEO three weeks earlier that the company had an unsupportable cost structure and no customers. R. 17280-17282; Gov't C.A. Br. 26; GX 984, at 13. And on a special analyst conference call in March 2001 intended to address rumors about EBS's poor condition, petitioner described EBS as in the midst of a "great quarter" marked by "strong growth" in all aspects of its business. Gov't C.A. Br. 28-29. According to the trial testimony of EBS's chief operating officer, that description was "the opposite" of the truth. R. 20698.

Petitioner's scheme to inflate Enron's share price took a wide variety of other forms. To maintain the fiction that Enron was steadily growing at a rate that met or exceeded analyst's expectations, for example, petitioner repeatedly directed that earnings figures be altered after the quarter ended so that the reported numbers would "beat the street." Gov't C.A. Br. 35. On two such occasions, funds were simply moved out of unrelated reserve accounts and recorded as earnings. R. 19311, 19324-19327. The CEO of Wholesale later explained that this tactic was "backwards" and flatly improper. R. 19859. As one of Enron's outside auditors put it at trial: "That is not a gray area. It's black and white." R. 23512.

b. On August 14, 2001, petitioner abruptly resigned from his position as Enron's CEO. By that time, petitioner knew that Enron faced mounting problems and was suffering substantial undisclosed losses. R. 21451-21452, 23962. On September 6, 2001, shortly after meeting with Kenneth Lay, who had succeeded petitioner as CEO, petitioner called his broker and tried to sell 200,000 shares of Enron stock. R. 25018-25019, 25021. The broker explained he would have to report the transaction to the SEC and the public unless petitioner obtained a letter from Enron indicating that he was no longer a manager. R. 25021-25023. Petitioner told the broker to hold the order, R. 25021, obtained such a letter on September 10, 2001, Gov't C.A. Br. 64; GX 1892, and on September 17, the first day that the markets opened after the September 11 terrorist attacks, conveyed to his broker an order to sell 500,000 shares of Enron stock along with instructions that he did not want people at Enron to know about the sale. R. 25024, 25032. Petitioner netted more than $15 million from the transaction; he later testified under oath before the SEC that the reason he sold those shares was that he was "scared" by September 11, and that "[t]here was no other reason other than September 11th that [he] sold the stock." R. 25061, 25064. Less than three months after petitioner's trade, Enron collapsed in bankruptcy.

2. On February 18, 2004, a federal grand jury in the Southern District of Texas returned an indictment against petitioner and Richard Causey, Enron's chief accounting officer. First Superseding Indictment. The indictment alleged that petitioner conspired to commit securities fraud and to defraud Enron of money and property through the use of the interstate wires. *Id.* at 34-41. It also charged petitioner with 35 substantive counts, including 20 counts of securities fraud for making false statements to investors, the SEC, and outside auditors. *Id.* at 41, 44-50.

On July 7, 2004, the grand jury returned a superseding indictment adding Lay as a defendant. J.A. 274a. That superseding indictment also supplemented Count 1 to allege that the conspiracy in which petitioner, Lay, and Causey participated included as an object "depriving Enron and its shareholders of the intangible right of honest services." J.A. 318a. The superseding indictment, like the prior indictment, recounted petitioner's massive scheme to deceive Enron and the investing public by manipulating earnings, making false statements to the SEC and the public, concealing losses through sham transactions, and enriching himself in the process. J.A. 274a-370a.

3. a. On November 8, 2004, petitioner and his codefendants moved for a change of venue, contending that inflammatory pretrial publicity and pervasive community prejudice against former Enron executives would prevent a fair trial in Houston. Gov't C.A. Br.

136-137; Def. Jeffrey Skilling's Memo. in Supp. of Joint Mot. to Transfer Venue 1-5.

The government submitted a lengthy opposition refuting each basis for the motion. Govt's Memo. of Law in Resp. to Defs.' Joint Mot. to Transfer Venue (Venue Response). The government noted that polling data the defendants offered to show pervasive bias among Houston residents in fact demonstrated the opposite. Venue Response 35-38. When asked to name Enron executives they believed were guilty of a crime, nearly nine out of ten Houston respondents failed to identify petitioner. *Id.* at 36. Almost half of those polled had never heard of petitioner or had no substantive response when asked to provide any words they associated with his name. *Id.* at 37-38; J.A. 371a-551a. Results of a government-conducted survey, moreover, showed that Houston residents were actually more likely to believe that petitioner was not guilty than residents in other cities to which petitioner sought a transfer. Venue Response 40.

The government further argued that the press coverage concerning petitioner was largely factual and objective. Venue Response 29-35. Most of the coverage that petitioner characterized as "inflammatory" consisted of entries on the Internet, inside-page stories, letters to the editor, and opinion-based columns of uncertain or low readership. 4:04-cr-00025 Docket entry No. 230 paras. 17-18 (S.D. Tex. Dec. 3, 2004) (Zagorski Decl.). The government emphasized that press coverage of Enron had peaked in 2002, shortly after its bankruptcy, and had generally subsided in the two years since. Venue Response 31-32; Zagorski Decl. paras. 15, 19.

In addition, the government observed that other district courts had considered and rejected the argument that Houston could not produce impartial juries in

Enron-related criminal cases. Venue Response 20-28. In November 2003, Judge Hittner concluded that Lea Fastow, the wife of the former Enron chief financial officer, had failed to establish that community prejudice would preclude a fair trial or that jury selection would be ineffective to isolate any such prejudice. *United States* v. *Fastow*, 292 F. Supp. 2d 914 (S.D. Tex. 2003).[1] Similarly, in 2004, Judge Gilmore denied a venue transfer motion brought by executives of EBS, concluding that the Enron media coverage consisted primarily of "straight news stories" and that the use of questionnaires on prospective jurors drawn from the large and diverse Houston metropolitan area would yield an impartial panel. Order at 5-6, *United States* v. *Hirko*, No. 4:03-cr-00093 (Nov. 24, 2004) (*Hirko* Venue Order).

b. The district court agreed with the other courts to consider the issue and, after conducting a "[m]eticulous review of all of the evidence and arguments presented by the defendants," denied their motion. App., *infra*, at 7a. The court found that the defendants had highlighted "isolated incidents of intemperate commentary" but that, "for the most part, the reporting appears to have been objective and unemotional" with a "fact-based tone." *Id.* at 11a. The court also rejected the claim that community sentiment warranted a presumption of jury prejudice. The court concluded that the defendants' polling data did not show "a reasonable likelihood that the court will be unable to [e]mpanel an impartial jury despite widespread knowledge of the case." *Id.* at 19a. The court added that public opinion polls are generally "unpersuasive" and that "effective voir dire [i]s a preferable way to ferret out any bias." *Id.* at 18a. The court also concluded that because it had "carefully reviewed defendants' evidence," *id.* at 12a, and because the defendants' factual allegations would not justify relief even if established, no evidentiary hearing on the motion was necessary, *id.* at 21a-22a.[2]

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[1] Judge Hittner later ordered a venue transfer to Brownsville, Texas, after Fastow confessed in a failed guilty plea allocution that was widely reported in Houston. Venue Response 18 n.8.

c. By the time petitioner's case reached trial, three other Enron-related criminal cases had proceeded to verdict in Houston: *United States* v. *Arthur Andersen LLP*, involving charges against Enron's outside accountants; *United States* v. *Bayly*, concerning charges against Merrill Lynch and Enron executives for sham sales of Nigerian barges; and *United States* v. *Hirko*, involving allegations of fraud and insider trading by five EBS executives. A different district court judge presided over each of those trials, but in all three the court conducted jury selection in the same manner. Each court distributed a jury questionnaire to a pool of several hundred potential jurors; dismissed individuals whose responses to the questionnaire demonstrated bias or other disqualifying characteristics; and, after further questioning by the court and counsel, selected a jury from the remaining venire in one day. Venue Response 20-28.

That process proved effective in empaneling juries capable of basing verdicts on the evidence presented in court. In *Hirko*, the jury deliberated for several days and did not convict any Enron defendant; in *Bayly*, which was routinely described as "the first Enron criminal trial," the jury convicted five defendants, including four Merrill Lynch executives, but acquitted a former Enron executive. Venue Response 24-28. At the sentencing phase of *Bayly*, the jury found a loss amount of slightly over $13 million, even though the government had argued that the true loss to Enron and its shareholders from the defendants' fraud was $40 million. *Id.* at 28. In an article reporting the *Bayly* verdicts, the *Houston Chronicle* quoted a commentator saying that the performance of the jury undermined claims that Houston could not render impartial justice in Enron-related cases. Mary Flood & Tom Fowler, *5 Guilty in Enron Barge Scheme*, Houston Chronicle, Nov. 4, 2004 <http://www.chron.com/disp/story.mpl/special/enron/barge/2883572.html>.

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[2] Petitioner and Lay renewed the venue transfer motion on January 4, 2006, after Causey pled guilty. The district court again denied the motion, essentially for the reasons set forth in its earlier order. Order (Jan. 23, 2006).

d. The district court selected petitioner's jury using the same basic procedure employed in *Bayly*, *Hirko*, and *Arthur Andersen*. Before trial, the court distributed a 14-page jury questionnaire to 400 prospective jurors and received 283 responses. R. 11773; S.J.A. 5sa-244sa. The questionnaires sought information about the prospective jurors' jobs, education, political views and party affiliation, their relationship to Enron or to anyone affected in any way by the company's collapse, their opinions about Enron and the government's investigation, their sources of information about the case, the periodicals they read, and the Internet sites they visited. The questionnaires also asked whether recipients were angry at Enron or had an opinion about the defendants or the defendants' guilt. Gov't C.A. Br. 140. After reviewing the completed questionnaires, the parties agreed to excuse 119 jurors for "cause, hardship, and/or physical disability." R. 11890-11891, 13593-13594. The court remarked that its evaluation of the questionnaires left it "very impressed by the apparent lack of bias or influence from media exposure." R. 14375.

The court then conducted voir dire of the remaining venire members. The court began by explaining the importance of an impartial jury and inquiring whether "any of you have doubts about your ability to conscientiously and fairly follow these very important rules." Pet. App. 62a. After excusing two prospective jurors who indicated that they could not be fair, the court again cautioned that the case was not about Enron's bankruptcy and emphasized that the jurors' role was not "to right a wrong or to provide remedies for those who suffered from the collapse of Enron." *Ibid.* The court admonished the potential jurors that they could not "seek vengeance against Enron's former officers because of some wrongdoing they believe Enron or its officers may have committed," and that anyone who had such an attitude could not "be a fair and impartial juror." *Id.* at 62a-63a.

The court next questioned the potential jurors individually, out of earshot of other venire members, about their responses to the jury questionnaire and exposure to pretrial publicity. J.A. 852a; Pet. App. 63a; Gov't C.A. Br. 141. The court allowed the defense attorneys to ask further questions they thought necessary to determine a juror's impartiality, and although the court twice curtailed inquiry by Lay's counsel, it never prevent petitioner's counsel from asking such questions. *Ibid.* Even so, defense counsel asked only eight potential jurors about their exposure to publicity and declined to question 19 of the 46 potential jurors called to the bench, including four who were selected and three of the four alternates. R. 14445-14446, 14468-14470, 14477-14478, 14495-14497, 14505, 14534-14535, 14646-14649, 14657-14659.

Thirty-seven (or approximately 85%) of the 43 potential jurors questioned individually about pretrial publicity stated that they had limited exposure to media coverage of Enron or the defendants or did not recall anything significant. Gov't C.A. Br. 160; see *id.* at 141-147. Of those venire members who recalled hearing news about Enron, most said that they did not remember very much or did not hear anything that either would make them think petitioner was guilty or would interfere with their ability to decide the case on the evidence. *Id.* at 144-146.

The court continued the individual voir dire until it had qualified 38 potential jurors—enough so that 12 jurors and four alternates would remain after the parties exercised their peremptory challenges, including two additional challenges the court allotted the defendants. Gov't C.A. Br. 141; R. 12596. In the process, the court granted three challenges for cause by the defendants and denied five; it granted one challenge for cause by the government and denied four. Gov't C.A. Br. 147.

Of the individuals who remained after this process and served as jurors or alternates, ten told the court that they did not follow the news about Enron, nine either did not subscribe to the *Houston Chronicle* or read it infrequently, and four never or rarely watched television. Gov't C.A. Br. 141-142. Most indicated a general lack of interest in or knowledge about the Enron subject matter, offering the common refrain that "I just don't care much about it at all" because "it's just not something that directly concerns me." R. 14577 (Juror 66); see, *e.g.*, R. 14670 (Juror 113: "[I]t didn't directly affect me, so I didn't really retain much of what was in the news at the time."); R. 14547 (Juror 55: "just not interested in the case"); R. 14459 (Juror 28: "not interested"); R. 14634 (Juror 91: "I don't know a whole lot about this case, honestly"). One juror whom petitioner unsuccessfully challenged for cause sat on the jury after petitioner declined to use a peremptory strike to remove him. Pet. App. 54a.

e. On May 25, 2006, after a four-month trial and nearly five days of deliberation, the jury found petitioner guilty of conspiracy, 12 counts of securities fraud, five counts of making false representations to auditors, and one count of insider trading. Pet. App. 19a; Gov't C.A. Br. 5, 161. The jury also found petitioner not guilty of nine counts of insider trading. Pet. App. 19a.

4. The court of appeals affirmed petitioner's convictions and remanded for resentencing. Pet. App. 1a-135a. Petitioner argued that his conduct did not constitute honest services wire fraud because it was intended to benefit Enron, "not to promote [petitioner's] interests at Enron's expense." Pet. C.A. Br. 68; see *id.* at 60-71. The court rejected that contention, concluding that "the jury was entitled to convict [petitioner] of conspiracy to commit honest-services wire fraud" based on the elements contained in the jury instructions. Pet. App. 29a.

Petitioner also argued that pretrial publicity and community prejudice required a presumption that any jury empaneled in Houston would not be fair and impartial, and contended that the jury that actually sat in his case was biased. Pet. C.A. Br. 121-173. The court of appeals agreed with petitioner that the nature of the media coverage and the effects of Enron's collapse on Houston were sufficient to raise a presumption of jury prejudice. Pet. App. 54a-60a. The court concluded, however, that the district court's "proper and thorough" voir dire "more than mitigated any effects of this prejudice." *Id.* at 63a, 68a. The court noted that, after "prescreening veniremembers based upon their responses" to an "extensive questionnaire," the district court had conducted "searching" questioning of the prospective jurors, "requiring more than just the veniremembers' statements that he or she could be fair." *Id.* at 62a-63a & n.51. In addition, the court found that the government "met its burden of demonstrating the impartiality of the empaneled jury." *Id.* at 67a; see 63a-68a. Observing that petitioner "failed to challenge for cause all but one of the jurors who actually sat," *id.* at 64a, the court affirmed the district court's finding that the one seated juror whom petitioner had challenged for cause was unbiased. *Id.* at 65a-67a.

## SUMMARY OF ARGUMENT

I. The district court's denial of petitioner's motion for a change of venue did not violate his constitutional rights. Petitioner's central contention is that the degree and nature of pretrial publicity, and the impact of Enron's collapse on Houston, gave rise to an irrebuttable presumption of prejudice among the entire venire. But this Court's cases—and the Constitution—are satisfied if the jurors who actually sat are impartial. Publicity surrounding a crime may create a need for special care in jury selection, but a defendant is not deprived of a constitutional right unless he can show that a selected juror was biased. The meticulous and careful jury-selection process conducted by the district court in this case produced an unbiased jury, and petitioner cannot carry his burden to show otherwise.

Petitioner argues for an exception to the usual rule requiring a showing of actual bias based on language in this Court's cases discussing a presumption of prejudice in extreme circumstances. But only one of those cases applied such a presumption, and that case turned on the unique fact of a televised jailhouse confession of the defendant that saturated the community and effectively substituted for the trial. In the nearly 50 years since, the Court has not seen a similar case. It has invalidated convictions when pretrial publicity produced *actually* biased jurors, and when the presence of the media *in* the courtroom produced a circus atmosphere. But those cases fundamentally differ from the situation here. This Court's decision in *Mu'min* v. *Virginia*, 500 U.S. 415 (1991), establishes that a trial judge's vigilance in voir dire is fully capable of ferreting out bias and that the judge's decisions to seat a juror are entitled to deference on appeal. In contrast, petitioner's conclusive presumption of prejudice conflicts with this Court's general avoidance of rules of automatic reversal and is at odds with the basic premise of the jury system that trial judges are equal to the task of empaneling impartial jurors.

Even if publicity could sometimes create a presumption of prejudice, none should apply here. Petitioner was tried in a large and diverse metropolitan area with a population of 4.5 million. Screening devices are fully capable of identifying 12 jurors untainted by publicity in that setting. Three different district judges hearing Enron-related criminal trials in Houston so concluded. And the mixed outcomes in those cases—including petitioner's acquittals on nine counts—demonstrates that the publicity did not corrupt the trial juries.

Finally, if a presumption of prejudice did arise here, the government should be able to rebut it by establishing by a preponderance of the evidence that no biased juror sat. On the record here, the government carried that burden.

II. The honest services statute, 18 U.S.C. 1346, is not unconstitutionally vague, and petitioner's conspiracy conviction should be upheld.

A criminal statute is not unconstitutionally vague if it provides fair notice of the conduct it reaches and does not encourage arbitrary enforcement. This Court has recognized that the meaning of a statute can be illuminated by judicial decisions and that statutes can incorporate terms of art and judicial interpretations of protected rights. Section 1346 employs a term of art—"the intangible right of honest services"—which takes its meaning from the body of case law before this Court's decision in *McNally* v. *United States*, 483 U.S. 350 (1987). Those cases reveal that honest services violations required three elements—a breach of the duty of loyalty, intent to deceive, and materiality. Courts also have universally recognized that the pre-*McNally* cases took two forms: (1) accepting a bribe or kickback in payment for official action, and (2) taking official action that furthers an undisclosed, conflicting personal financial interest. Petitioner would find a lack of clarity in peripheral areas of pre-*McNally* law, in which he exaggerates supposed disagreements, and in past prosecutorial litigating positions, which courts rejected. But none of his arguments refute that the core elements and theories of honest services fraud sufficiently define the statute to satisfy constitutional requirements. And vagueness concerns are especially unwarranted here because no defendant can be convicted absent intent to engage in deceptive conduct in breach of a known duty.

Petitioner does not question the clarity of the bribery/kickback line of cases, and in light of the abundant pre-*McNally* case law he could not reasonably do so. The statute therefore cannot be held facially vague in *all* of its applications. He does argue that the nondisclosure cases form a less-well-defined category and that nondisclosure cases can be prosecuted as money-or-property frauds. Those claims are incorrect. Many pre-*McNally* cases involved undisclosed self-dealing—including *McNally* itself. And not all non-disclosure cases defraud the principal of money or property. For example, a council member who votes to rezone an area in which he secretly holds property interests does not commit a money-or-property fraud—but does commit honest services fraud.

While petitioner's crime did not take the classic form of an undisclosed outside interest that the employee furthered through his official action, it does come within the nondisclosure theory. Petitioner pursued his own financial interests—his compensation scheme—by taking action as an Enron executive to inflate Enron's stock price through deception about the company's true financial condition. The only question here is whether the public nature of petitioner's compensation scheme prevents his conduct from constituting honest services fraud. It does not. Although petitioner's basic compensation scheme was public, his scheme to artificially inflate the company's stock price by misrepresenting its financial condition, in order to derive additional personal benefits at the expense of shareholders, was not. Petitioner suggests that Section 1346 requires as an element that he acted for private gain, but the pre-*McNally* cases do not support that purported element and, in any event, it was amply satisfied here.

## ARGUMENT

### I. THE DENIAL OF PETITIONER'S VENUE TRANSFER MOTIONS DID NOT VIOLATE HIS FAIR TRIAL RIGHTS

Petitioner contends (Br. 23-38) that the district court violated his due process right to a fair trial and his Sixth Amendment right to an impartial jury by denying his motions for a change of venue. He argues that pretrial publicity surrounding Enron's collapse created an irrebuttable "presumption of pejudice," requiring automatic reversal of his convictions without regard to whether the jury that decided his case was actually biased. Alternatively, petitioner contends that the "presumption of prejudice" obligated the government to prove the impartiality of each juror beyond a reasonable doubt, that the courts below erroneously failed to hold the government to that burden, and that the government could not make such a showing in any event.

The Court should reject those claims. Petitioner received what the Constitution guaranteed him: a trial before a panel of unbiased jurors capable of deciding the case based on the evidence presented in court. Although language in some of this Court's cases speaks of a presumption of juror prejudice from pretrial publicity, no holding of this Court requires the general irrebuttable presumption of jury prejudice that petitioner seeks. And many of this Court's cases attest to the efficacy of the usual trial tools employed to ferret out bias. To the extent a presumption of prejudice exists, it would not apply in this case, and even if it did apply, it would not require "automatic reversal" of petitioner's convictions. Instead, any such presumption would shift to the government the burden to show by a preponderance the actual impartiality of the seated jury. For the reasons the court of appeals identified, the government amply satisfied that showing.[3]

### A. Because The Jury That Decided His Case Was Impartial, Petitioner Has Failed To Establish A Constitutional Violation

Petitioner emphasizes the publicity generated by Enron's collapse, contending that such media coverage, combined with the financial impact of the company's bankruptcy, rendered Houston a constitutionally impermissible venue for his trial. That contention is incorrect. The Constitution guarantees a trial before a jury that is actually impartial, not a trial in a venue whose populace has no exposure to the effects of the defendant's crime or adverse pretrial publicity about it. Because no biased juror sat on petitioner's jury, no violation of rights occurred.

#### *1. The Constitution requires trial before an impartial jury*

"The constitutional standard of fairness requires that a defendant have a panel of impartial, indifferent jurors." *Murphy* v. *Florida*, 421 U.S. 794, 799 (1975) (internal quotation marks and citation omitted); see *Smith* v. *Phillips*, 455 U.S. 209, 217 (1982) ("Due process means a jury capable and willing to decide the case solely on the evidence before it"). That principle is satisfied when no biased juror is actually seated at trial. See *Rivera* v. *Illinois*, 129 S. Ct. 1446, 1454 (2009) ("[H]aving been tried by a jury on which no biased juror sat, [the defendant] could not tenably assert any violation of his right to due process.") (internal quotation marks, citations, and ellipsis omitted); see *id.* at 1450 ("[i]f all seated jurors are qualified and unbiased," erroneous denial of defendant's peremptory challenge does not warrant reversal); see also *United States* v. *Martinez-Salazar*, 528 U.S. 304, 316 (2000); *Ross* v. *Oklahoma*, 487 U.S. 81, 85 (1988); *Patton* v. *Yount*, 467 U.S. 1025, 1035 (1984) ("The relevant question" is whether the jurors who decided the case "had such fixed opinions that they could not judge impartially the guilt of the defendant.").

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[3] Petitioner also contends (Br. 34) that, independent of the Constitution, this Court should exercise its "inherent supervisory power" to reverse his convictions. Because petitioner did not assert that argument below, the court of appeals did not address it, and it is not properly before this Court. In any event, there is no warrant for this Court to use its supervisory authority to establish a new and different impartiality rule. See *United States* v. *Payner*, 447 U.S. 727, 737 (1980) (holding that supervisory authority does not "confer on the judiciary discretionary power to disregard the considered limitations of the law it is charged with enforcing").

A defendant who argues that he was deprived of an impartial jury must establish that claim "not as a matter of speculation but as a demonstrable reality." *United States ex rel. Darcy* v. *Handy*, 351 U.S. 454, 462 (1956) (citation omitted). Thus, "[t]his Court has long held that the remedy for allegations of juror partiality" is the defendant's "opportunity to prove actual bias" on the part of a seated juror. *Smith*, 455 U.S. at 215; see *Dennis* v. *United States*, 339 U.S. 162, 171-172 (1950) ("Preservation of the opportunity to prove actual bias is a guarantee of a defendant's right to an impartial jury."). When the defendant's claim of bias arises from allegedly prejudicial publicity, "the appropriate safeguard against such prejudice is the defendant's right to demonstrate that the media's coverage of his case—be it printed or broadcast—compromised the ability of the particular jury that heard the case to adjudicate fairly." *Smith*, 455 U.S. at 217 (quoting *Chandler* v. *Florida*, 449 U.S. 560, 575 (1981)).

### *2. Petitioner's jury was impartial*

a. Petitioner has failed to establish that any juror who decided his case was actually biased. Voir dire demonstrated that, whatever the beliefs of Houston residents generally, the particular individuals selected for petitioner's jury neither knew nor cared much about Enron's collapse or the resulting media coverage. See p. 12, *supra* (noting that nine jurors did not read the *Houston Chronicle*, four rarely or never watched television, and ten said that they did not follow the news about Enron). The overwhelming sentiment among the seated jurors was indifference to events that did not concern them and that were by then "old news." J.A. 856a. The juror's statements thus indicated that they were eminently "capable and willing to decide the case solely on the evidence before [them]." *Smith*, 455 U.S. at 217.

Petitioner's own actions during voir dire underscore the absence of actual bias among the seated jurors. Although petitioner moved to strike eight potential jurors for cause, he did not assert such a challenge specifically to 11 of the 12 individuals who sat on the jury. Indeed, counsel for both petitioner and his co-defendant declined to ask a single question of four of the seated jurors, apparently satisfied, after reading those jurors' questionnaires and hearing their responses to the court's initial inquiry, that they did not harbor any bias or partiality.

The jury's verdict confirmed its impartiality. Although the jurors found petitioner guilty on some counts, they also found him not guilty on nine counts. The counts of acquittal, moreover, concerned allegations that petitioner had enriched himself at the expense of

Enron shareholders by selling company stock based on inside information. If petitioner were correct that the jury was infected with a venomous anti-Enron sentiment, conviction on those charges, regardless of the sufficiency of the evidence, would have served as an apt means to express the jury's purported desire for "revenge" on behalf of Houston's residents. That the jurors instead unanimously voted to find petitioner not guilty of nine insider trading charges speaks volumes about their ability, irrespective of any pretrial publicity about the case, "conscientiously [to] apply the law and find the facts" based on the evidence at trial. *Lockhart* v. *McCree*, 476 U.S. 162, 178 (1986).

b. In an effort to establish actual bias, petitioner emphasizes certain comments made by jurors whom he declined to challenge for cause. That effort, however, relies on a selective and incomplete characterization of the record. Petitioner notes, for example, that one juror expressed sympathy on his questionnaire for the "small average worker [who] saves money for retirement all his life." Pet. Br. 14. But petitioner chose not to challenge that juror (or even to ask him any questions) after the juror made clear that he "underst[oo]d that it's the government's job to prove guilt beyond a reasonable doubt" and did not have "any problem" with that requirement; that he "[v]ery seldom" read the *Houston Chronicle* and never watched the news; and that he had "no opinion" about the defendant's guilt. J.A. 981a-983a. Similarly, petitioner attacks another juror as biased because she stated on her questionnaire that "someone had to be doing something illegal" in connection with Enron's collapse. Br. 14. Petitioner omits to mention, however, that at voir dire the same juror explained that "[b]ecause it never really affected [her]," she "never really paid that much attention" to news about Enron; that she "ha[d] really honestly not formed an opinion" about petitioner's guilt; and that she "[a]bsolutely" could "base [her] decision only on the evidence in the case." J.A. 1010a-1011a. Petitioner did not seek to ask that juror any questions, much less to remove her on grounds that she was biased.

Petitioner also relies heavily on certain statements of Juror 11, the one seated juror whom petitioner individually challenged for cause. But at trial, even though the district court granted petitioner and his co-defendant 12 peremptory challenges—six more than necessary to strike every potential juror, including Juror 11, whom counsel had unsuccessfully challenged for cause— neither defendant chose to strike Juror 11. In the view of trial counsel and petitioner's professional jury consultants, Juror 11 evidently did not appear so "obvious[ly] bias[ed]" or his comments so "cartoonishly prejudicial" as petitioner now asserts. Br. 35.

In any event, the district court was correct in rejecting the claim of actual bias on the part of Juror 11. Petitioner cites the juror's statements during voir dire that corporate CEOs are "greedy" and "walk a line that stretches sometimes the legality of something," and that he worked with a former Enron employee who lost money in his retirement plan. Pet. App. 65a-66a. As the court of appeals observed, however, Juror 11 also stated that he had "no idea" about the defendants' guilt; that he would have "no problem" telling his co-worker that the government failed to prove its case; that he did not "get into the details" of the Enron coverage; that he did not believe everything he read in the newspapers; that the defendants "earned their salaries"; that "greedy" did "not necessarily" mean "illegal"; and that he could "start this case with a clean slate that would require the government to prove its case." *Id.* 65a-67a; J.A. 853a-858a.

This Court has held that "ambiguous and at times contradictory" responses to voir dire examination of this kind do not alone establish actual bias. *Patton*, 467 U.S. at 1039. "It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court." *Irvin* v. *Dowd*, 366 U.S. 717, 723 (1961). The district court, which is "best suited to determine competency to serve impartially," *Patton*, 467 U.S. at 1039, concluded that Juror 11 was capable of discharging that function. Because the district court's determination "is essentially one of credibility, and therefore largely one of demeanor," it is "entitled * * * to special deference." *Id.* at 1038 & n.14 (internal quotation marks omitted); see *Mu'Min* v. *Virginia*, 500 U.S. 415, 428 (1991) ("A trial court's findings of juror impartiality may be overturned only for manifest error.") (citation omitted). After careful review of the entire voir dire, and with an eye on the publicity surrounding this case, the district court found Juror 11 unbiased and the court of appeals properly accepted that determination.

### B. Petitioner Cannot Establish A Constitutional Violation Based On Presumed Jury Prejudice

Petitioner contends that the circumstances surrounding his trial warrant a departure from the ordinary rule requiring that he establish actual bias. He argues that the publicity and impact resulting from Enron's collapse gave rise to a conclusive "presumption of juror prejudice," which compels automatic reversal. That argument lacks merit. Despite language in some opinions, this Court's holdings do not support such an irrebuttable presumption, which would conflict with well-established principles of constitutional adjudication and basic precepts of the jury system. In any event, even if petitioner were correct that an irrebuttable presumption of juror prejudice could be triggered in some cases, it would not be justified here.

### 1. *This Court's decisions do not support an irrebuttable presumption of juror prejudice*

Petitioner cites a number of this Court's decisions for the proposition that, when a community is exposed to a certain level of pretrial publicity, all potential jurors in that community must be presumed biased. Pet. Br. 23-34 (citing, *inter alia*, *Sheppard* v. *Maxwell*, 384 U.S. 333 (1966); *Estes* v. *Texas*, 381 U.S. 532 (1965); *Rideau* v. *Louisiana*, 373 U.S. 723 (1963), and *Irvin* v. *Dowd*, *supra*). In petitioner's view, that presumption is irrebuttable because jurors in such a community can neither be trusted to identify their own prejudices nor believed when they profess to be impartial.

a. The only decision in which this Court has "presumed" juror prejudice based solely on pretrial publicity is *Rideau*, and that case turned on the unique circumstance that the defendant's jailhouse confession was repeatedly televised in a small community. There, the morning after a bank employee in a small community was kidnapped and murdered, police subjected the defendant to jail-cell questioning that resulted in his detailed confession to the crimes. The confession was recorded and, for the next several days, a 20-minute film of the defendant in the act of confessing was aired on local television before audiences constituting as much as two-thirds of the community. 373 U.S. at 723-727. The defendant was convicted by a jury that included three members who saw and heard his confession, as well as two deputy sheriffs. *Id.* at 725. In light of the televised confession, this Court characterized the ensuing trial as a "kangaroo court proceeding[]." *Id.* at 726.

Given its unique facts, *Rideau* does not establish a general rule that courts may presume bias among all potential jurors whenever a particular community is exposed to heavy and adverse media coverage of events related to a crime. Indeed, the Court has yet to find a parallel to *Rideau* in the nearly 50 years since it was decided. As this Court has since explained, "pretrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial." *Nebraska Press Ass'n* v. *Stuart*, 427 U.S. 539, 554 (1976). *Rideau* involved what this Court viewed as essentially an out-of-court "trial," presided over by a sheriff and conducted while the defendant was in jail and without counsel. 373 U.S. at 727. The Court's holding that it did not need to review the voir dire transcript to say that a capital trial following the defendant's televised jailhouse confession violated due process, *ibid.*, provides no precedent for an irrebuttable presumption of prejudice for inflammatory newspaper articles about a crime or the impact of that crime on a community.

b. The remaining cases petitioner cites provide no support for a "presumed prejudice rule." In *Irvin*, "the Court readily found actual prejudice" after carefully reviewing the voir dire and determining that "eight of the 12 [seated] jurors had formed an opinion that the defendant was guilty before the trial began." *Murphy*, 421 U.S. at 798; see *Irvin*, 366 U.S. at 727 (conducting an "examination of the 2,783-page *voir dire* record" and focusing in particular on the "*voir dire* examination * * * of the jurors finally placed in the jury box"); Pet.

Br. 26 ("*Irvin* may be understood as a case addressing the actual prejudices of a particular jury."). Similarly, while *Patton* characterized *Irwin* as applying a rule of presumptive prejudice, 467 U.S. at 1031, the Court's holding in *Patton* was that no such presumption applied and that "[t]he relevant question is not whether the community remembered the case, but whether the jurors at * * * trial had such fixed opinions that they could not judge impartially the guilt of the defendant." *Id.* at 1035.

Petitioner describes *Estes* v. *Texas, supra,* and *Sheppard* v. *Maxwell, supra,* as holding that the defendant need not demonstrate actual juror bias when the community is "saturated" with adverse publicity. But that is precisely the interpretation of those cases that this Court has rejected. The constitutional flaw in *Estes* was the "circus atmosphere" of the trial, and in *Sheppard,* the Court found a due process violation principally because the "courthouse [was] given over to accommodate the public appetite for carnival." *Murphy,* 421 U.S. at 799; see *Sheppard,* 384 U.S. at 355 (noting that "bedlam reigned at the courthouse during the trial and newsmen took over practically the entire courtroom"). This Court explained in *Murphy* that *Estes* and *Sheppard* "cannot be made to stand for the proposition that juror exposure to information about a state defendant's prior convictions or to news accounts of the crime with which he is charged alone presumptively deprives the defendant of due process." 421 U.S. at 799. Those cases concern the due process implications of media presence in the courtroom, not primarily the effect of pretrial publicity on potential jurors.

Petitioner also notes several instances in which this Court has suggested that, when a community is exposed to particularly prejudicial publicity, "the jurors' claims that they can be impartial should not be believed." Pet. Br. 29 (quoting *Mu'Min*, 500 U.S. at 429). In the same cases, however, this Court has emphasized the heavy deference due the trial court's determination of a juror's actual impartiality. See *Mu'Min*, 500 U.S. at 428-429 (noting that "[a] trial court's findings of juror impartiality may be overturned only for 'manifest error'") (citation omitted); see *id.* at 427 (emphasizing that, "[p]articularly with respect to pretrial publicity," "primary reliance on the judgment of the trial court" to determine juror bias "makes good sense"); see *Patton*, 467 U.S. at 1031 (stating that although *Irvin* "held that adverse pretrial publicity can create such a presumption of prejudice in a community that the jurors' claims that they can be impartial should not be believed," *Irvin* also emphasized "that the trial court's findings of impartiality might be overturned only for 'manifest error'") (citation omitted). The statements petitioner emphasizes mean only that the district court should conduct a more searching inquiry than usual and closely scrutinize juror claims of impartiality when pretrial publicity is particularly intense. They do not compel the conclusion that juror claims of impartiality must never be believed—and that appellate courts are bound to reverse a trial judge's contrary credibility determination—once pretrial publicity exceeds a certain threshold.

Petitioner's position runs counter to this Court's most recent pronouncement on the issue in *Mu'Min*. There, the Court noted that the record before it did not reflect the same kind of community sentiment described in *Irvin*. But the Court reasoned that, if such animosity did exist, the appropriate remedy would have been more searching voir dire, not automatic transfer or reversal.

The Court explained: "Had the trial court in this case been confronted with the 'wave of public passion' engendered by pretrial publicity that occurred in connection with Irvin's trial, the Due Process Clause of the Fourteenth Amendment might well have required more extensive examination of potential jurors than it undertook here." *Mu'Min*, 500 U.S. at 429.

### 2. *The presumption petitioner proposes would conflict with well established principles and preclude trial of the most prominent cases*

a. Petitioner's proposed rule of automatic reversal in cases of exposure to high levels of pretrial publicity would conflict with this Court's "structural error" doctrine as well as with bedrock principles underlying the jury system.

This Court has explained that a rule of "automatic reversal," without an inquiry intò actual prejudice, is appropriate "only in a very limited class of cases." *Neder* v. *United States*, 527 U.S. 1, 8 (1999) (internal quotation marks and citations omitted). That category is characterized by cases in which the effect of a serious error cannot be ascertained or isolated. *United States* v. *Gonzalez-Lopez*, 548 U.S. 140, 148-150 & n.4 (2006). This Court has identified only a handful of defects that qualify as such "structural error," such as a total deprivation of the right to counsel (*Gideon* v. *Wainwright*, 372 U.S. 335 (1963)); a biased trial judge (*Tumey* v. *Ohio*, 273 U.S. 510 (1927)); the race-based exclusion of grand jurors (*Vasquez* v. *Hillery*, 474 U.S. 254 (1986)); an incorrect reasonable doubt instruction (*Sullivan* v. *Lousiana*, 508 U.S. 275 (1993)); and denial of the right to be represented by retained counsel of choice (*Gonzalez-Lopez*, 548 U.S. at 149).

Exposure of potential jurors to intense pretrial publicity does not qualify as a "structural error" under this framework. Indeed, as explained above, see pp. 19-21, *supra*, no "error" occurs at all in this context unless the *voir dire* reveals that such exposure actually impaired a juror's impartiality. But even if a high risk of bias among prospective jurors were itself considered a constitutional "error," the effects of that error can be ascertained. That is the purpose of voir dire—"to *ascertain* whether the juror has any bias, opinion, or prejudice that would affect or control the fair determination by him of the issues to be tried." *Connors* v. *United States*, 158 U.S. 408, 413 (1895) (emphasis added). Using the many tools at its disposal, the district court can insulate the trial from the improper influence of media coverage by ensuring—as the district court did in this case through questionnaires and searching voir dire—that individuals actually selected for the jury lack knowledge of or interest in the problematic publicity. Thus, although this Court has recognized that the effects of *actual* bias resulting from exposure of the "petit jury" to prejudicial publicity "cannot be ascertained," see, *e.g.*, *Gonzalez-Lopez*, 548 U.S. 149 n.4 (citation omitted), that rationale does not extend to *potential* bias arising from media coverage in the community from which the jury is drawn.

Petitioner's position rests on the premise that, when the potential jury pool has been saturated with pretrial publicity, voir dire is ineffective because "jurors in such circumstances can become infused with biases they cannot recognize" or will refuse to disclose. Pet. Br. 30. But the "almost invariable assumption of the law [is] that jurors follow their instructions," *Richardson* v. *Marsh*, 481 U.S. 200, 206 (1987), even when they are exposed to prejudicial information with a far greater "psychological impact" than press reports. Pet. Br. 30; see, *e.g.*, *Watkins* v. *Sowders*, 449 U.S. 341, 347-349 (1981) (holding effective an instruction not to consider erroneously admitted eyewitness identification evidence). Contrary to petitioner's contention, this Court has recognized that "one who is trying as an honest [person] to live up to the sanctity of his oath is well qualified to say whether he has an unbiased mind in a certain matter." *Dennis*, 339 U.S. at 171.

Similarly, petitioner's speculation that judges will be incapable of detecting perjury designed to conceal a juror's bias cannot be squared with the longstanding respect for the expertise of trial courts in matters of jury selection. As this Court has explained, "[t]he trial judge's function * * * [during jury selection] is not unlike that of the jurors later on in the trial"; "[b]oth must reach conclusions as to impartiality and credibility by relying on their own evaluations of demeanor evidence and of responses to questions." *Mu'min*, 500 U.S. at 424 (citation omitted). Indeed, this Court has said that, "[*p*]*articularly* with respect to pretrial publicity," "reliance on the judgment of the trial court" in determining juror impartiality "makes good sense." *Id.* at 427 (emphasis added).

b. The conclusive presumption of juror prejudice petitioner proposes would create serious obstacles to trial in prominent cases. To a far greater degree than in the early 1960s, when this Court decided the cases on which petitioner relies, publicity of noteworthy events and prosecutions is nationwide in scope. By its nature, media coverage carried on national networks, cable stations, and the Internet is not confined to the venue in which the crime is committed. If exposure to a certain level of pretrial publicity about the defendant or the events underlying trial renders a community per se unable to convene an impartial jury, as petitioner argues, then no venue will be acceptable, and no trial will be possible, in the most nationally significant cases. That cannot be the law.

### 3. *Even if juror prejudice may be presumed in some cases, that presumption would not apply here*

For three reasons, a conclusive presumption of bias among the entire jury pool would be particularly inconsistent with the realities surrounding petitioner's trial. For the same reasons, the court of appeals erred in finding even a rebuttable presumption applicable on these facts. Pet. App. 56a-60a.

a. First, petitioner's jury was drawn from the Houston Division of the Southern District of Texas, which consists of 13 counties and in 2004 had a population of at least 4.5 million people. Gov't C.A. Br. 152-153. The population of major metropolitan areas is sufficiently large, diverse, and transient that appropriate screening techniques such as questionnaires and voir dire examination can produce an impartial jury. See *Mu'Min*, 500 U.S. at 429 (evaluation of effect of pretrial publicity requires consideration of "the kind of community in which the coverage took place"); *CBS, Inc.* v. *United States Dist. Ct. for the Cent. Dist. of Cal.*, 729 F.2d 1174, 1181 (9th Cir. 1984).

Because of the size and composition of the jury pool, the court of appeals erred in concluding that "the sheer number of victims" from Enron's collapse supported a presumption of jury prejudice. J.A. 58a. Contrary to the court of appeals' reasoning, the district court did not "fail[] to account for th[at] non-media prejudice" in assessing whether Houston could yield a fair jury. *Ibid.* The district court was plainly aware of that potential source of bias; that is why it employed a detailed questionnaire that specifically asked potential jurors more than 20 questions about any contact they or anyone they knew had with Enron or the effects of its collapse. S.J.A. 9sa-13sa; *id.* at 12sa ("Do you know anyone * * * who has been negatively affected or hurt in any way by what happened at Enron?"). In a large urban area like Houston, screening devices like a questionnaire and voir dire are fully capable of identifying and eliminating from the jury pool any individual who has been influenced by media coverage or personally affected by the events at issue—and are fully capable of identifying 12 untainted jurors.

b. Second, the district court judge in this case was the third in the Southern District of Texas to consider claims of prejudicial pretrial publicity in an Enron-related prosecution and to conclude that Houston was capable of producing a fair and impartial jury. See *United States* v. *Fastow*, 292 F. Supp. 2d 914 (S.D. Tex. 2003); *United States* v. *Arthur Andersen LLP*, 4:02-cr-00121 Docket Entry No. 28 (S.D. Tex. Apr. 26, 2004); *Hirko* Venue Order. Those judges found that, contrary to petitioner's portrayal, "for the most part, the reporting appears to have been objective and unemotional" with a "fact-based tone." App., *infra*, at 11a; *Hirko* Venue Order at 6 (Enron coverage was primarily "straight news stories"). The court of appeals disagreed with that assessment of the media coverage, citing stories that it thought were "hard to characterize as non-inflammatory, even if they were just reporting the facts." J.A. 57a. But that finding was premised on the court of appeals' incorrect application of *de novo* review to the question whether the circumstances surrounding trial presumptively prejudiced the community. This Court has counseled deference to the trial court about the effect of publicity on the jury pool. "The judge of that court sits in the locale where the publicity is said to have had its effect and brings to his evaluation * * * his own perception of the depth and extent of news stories that might influence a juror." *Mu'Min*, 500 U.S. at 427. Consistent with *Mu'Min*, this Court should respect the judgment of the three different district court judges sitting in Houston about the sentiment of that community and the overall nature of the press coverage there.

c. Third, the outcome of this case and others demonstrated the ability of Houston jurors "conscientiously [to] apply the law and find the facts" in Enron-related criminal trials. *Lockhart*, 476 U.S. at 178 (citation omitted). In *Bayly*, the "first Enron criminal trial," the jury acquitted one of the two Enron defendants. In *Hirko*, the jury hung on certain counts but did not vote to convict any defendant. The case was retried before a second jury, which found one of the defendants not guilty in a verdict announced within days of the verdict in petitioner's case. And in this case, the jury deliberated for nearly five days and then found petitioner not guilty on nine counts. These results refute the suggestion that Houston jurors could not fairly consider the evidence in Enron cases or that the trial atmosphere in such proceedings was "utterly corrupted by press coverage." *Dobbert* v. *Florida*, 432 U.S. 282, 303 (1977) (citation omitted).

### C. The Court Of Appeals Correctly Concluded That, Even If A Presumption Of Juror Prejudice Applied, The Government Rebutted It On This Record

Even if petitioner were correct that some presumption of bias in the jury pool were warranted in this case, that presumption would not compel reversal of petitioner's convictions. Applying "a presumption of prejudice as opposed to a specific analysis does not change the ultimate inquiry:" whether pretrial publicity or community animosity resulted in actual bias on the jury that decided petitioner's case. *United States* v. *Olano*, 507 U.S. 725, 739 (1993). Such a presumption would simply reverse the ordinary allocation of burdens in this context, relieving the defendant of the obligation to establish actual bias and requiring the government to show its absence.

Petitioner asserts that "[i]f the presumption of prejudice is rebuttable," then "the Government should be required to prove beyond a reasonable doubt that no seated juror was actually affected by media and community bias." Pet. Br. 34. Although the government could satisfy a burden of proof beyond a reasonable doubt here, that burden is not the appropriate one. The government bears such a burden only when it seeks to show that a constitutional violation is harmless. See *Chapman* v. *California*, 386 U.S. 18, 24 (1967). But for the reasons set forth above, see pp. 19-21, *supra*, even presumptively prejudicial exposure of potential jurors to pretrial publicity does not itself establish a constitutional violation. To the extent the government must rebut a presumption of prejudice among potential jurors, that requirement "is not a matter of showing that the violation was harmless, but of showing that a violation of the right * * * [to an impartial jury did not] *occur*[]." *Gonzalez-Lopez*, 548 U.S. at 150. Because the existence of a constitutional violation turns on whether it is more likely than not that any particular juror was actually biased, a preponderance of the evidence standard should apply.

Applying the proper standard, the court of appeals correctly concluded that the government rebutted any presumption of bias. The district court's "exemplary" (Pet. App. 62a) jury-selection process resulted in a venire on which more than 85% of the individuals questioned said that they had no significant exposure to pretrial publicity. And for the same reasons that petitioner fails to establish actual bias among the jurors who were selected from that venire, see pp. 21-24, *supra*, the government can show that those jurors were impartial. The seated jurors professed either disinterest or unawareness of the press coverage concerning Enron; they stated that they had formed no opinions about petitioner's guilt; they testified that they would hold the government to its burden of proof; and their unanimous not guilty verdicts on nine counts confirmed that the district court correctly credited their assertions.

## II. THE HONEST SERVICES STATUTE IS CONSTITUTIONAL, AND PETITIONER'S CONVICTION IS VALID

Petitioner contends (Br. 38-58) that his conspiracy conviction is invalid because one object of the conspiracy was to violate the honest services wire fraud statute, 18 U.S.C. 1343, 1346, which petitioner argues is unconstitutionally vague. That contention lacks merit. Section 1346 provides fair notice and ascertainable limits on the conduct it covers. The elements of the offense—a material breach of the duty of loyalty, undertaken with a specific intent to deceive—limit the statute to two established categories of conduct: bribes and kickbacks, and undisclosed personal financial conflicts of interest. Petitioner's conduct satisfies those elements, but in any event, any error in the honest services aspect of petitioner's conspiracy conviction was harmless beyond a reasonable doubt.

### A. Section 1346 Is Not Unconstitutionally Vague

A penal statute is void for vagueness only if it fails to "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender* v. *Lawson*, 461 U.S. 352, 357 (1983). That principle "does not invalidate every statute which a reviewing court believes could have been drafted with greater precision." *Rose* v. *Locke*, 423 U.S. 48, 49 (1975). Nor is a statute void for vagueness simply because "trained lawyers" must "consult legal dictionaries, treatises, and judicial opinions before they may say with any certainty" what the statute forbids. *Id.* at 50; see *United States* v. *Kozminski*, 487 U.S. 931, 941 (1988) (holding that in 18 U.S.C. 241, "Congress intended the statute to incorporate by reference a large body of potentially evolving federal law"). Constitutional vagueness concerns "rest on * * * lack of notice, and hence may be overcome in any specific case where reasonable persons would know that their conduct is at risk." *Maynard* v. *Cartwright*, 486 U.S. 356, 361 (1988). Under these standards, Section 1346 is constitutional.

#### *1. Section 1346 reinstated the pre-*McNally *definition of honest services fraud*

In *McNally* v. *United States*, 483 U.S. 350 (1987), this Court rejected the unanimous view of the courts of appeals that the mail fraud statute, 18 U.S.C. 1341, protected against not only schemes for obtaining money or property, but also schemes to deprive others of intangible rights, such as the intangible right of honest services. 483 U.S. at 358; *id.* at 364 (Stevens, J., dissenting). The Court observed that, if Congress wished to expand federal fraud statutes beyond the deprivation of property rights, "it must speak more clearly than it has." *Id.* at 360. The following year, Congress responded by restoring one such right (the very right at issue in *McNally*) through Section 1346, which states that, for purposes of the mail and wire fraud statutes, "the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services." 18 U.S.C. 1346; see *Cleveland* v. *United States*, 531 U.S. 12, 19-20 (2000) ("Congress amended the law specifically to cover one of the 'intangible rights' that lower courts had protected under § 1341 prior to *McNally*.").

"[T]he intangible right of honest services" to which Congress referred is a term of art: it invokes the doctrine that this Court had rejected in *McNally* and reinstates it in both public and private contexts. As the Second Circuit has explained, "[t]he definite article 'the' suggests that 'intangible right of honest services' had a specific meaning to Congress when it enacted the statute—Congress was recriminalizing [mail fraud] * * * schemes to deprive others of *that* 'intangible right of honest services[]' which had been protected before *McNally*, not *all* intangible rights of honest services whatever they might be thought to be." *United States* v. *Rybicki*, 354 F.3d 124, 137-138 (2003) (en banc), cert. denied, 543 U.S. 809 (2004).

### 2. *The elements of honest services wire fraud under pre-* McNally *law are clearly defined*

Before *McNally*, the deprivation of the right of honest services was recognized as a species of fraud in both the public and the private spheres. *McNally*, 483 U.S. at 363-364 (Stevens, J., dissenting). The crime was exemplified by the conduct prosecuted in *McNally* itself. That case involved a "self-dealing" scheme in which state officials (both actual and de facto) deprived the government and citizens of the right to have government affairs "conducted honestly," by directing certain payments on state-purchased insurance to entities in which they had a financial interest, without any disclosure of that interest to relevant state officials. *Id.* at 352-353. *McNally* thus sets forth the paradigm case of honest services fraud that Congress intended to prohibit in Section 1346. That paradigmatic offense consists of three elements: (1) a breach of the duty of loyalty, undertaken with (2) an intent to deceive, that also is (3) material.

a. *Breach of the Duty of Loyalty.* Schemes to deprive others of "the intangible right of honest services" require that a public official, agent, or other person who owes a comparable duty of loyalty breaches that duty by secretly acting in his own financial interests while purporting to act in the interests of his principal. See *Rybicki*, 354 F.3d at 141-142. Such feigned loyalty to one's principal is a classic form of fraud.

*McNally* exemplifies the equation of "honest services" with the duty of loyalty, see 483 U.S. at 355; it involved a breach based on nondisclosure of a personal financial interest that might reasonably be thought to influence official decisionmaking. Other pre-*McNally* cases similarly illustrate the two general categories involving breaches of this duty: cases involving bribes or kickbacks and cases involving official action that furthers an undisclosed conflict of interest. Section 1346 therefore does not target all manner of dishonesty but rather criminalizes only schemes in which an employee or public officer takes official action to further his own interests while pretending to act in the interests of those to whom he owes a duty of loyalty.

b. *Specific Intent to Deceive.* Section 1346 also has a high mens rea requirement—specific intent to deceive—which eliminates any risk of unintentional violation. A "mind intent upon willful evasion is inconsistent with surprised innocence." *United States* v. *Ragen*, 314 U.S. 513, 524 (1942).

The mail and wire fraud statutes punish only schemes or artifices to "defraud," thus limiting their scope to intentional, fraudulent conduct. See *Durland* v. *United States*, 161 U.S. 306, 313 (1986). Innocent intent is not a mere affirmative defense; the government bears the burden of proving beyond a reasonable doubt the required intent to deceive. See, *e.g.*, *United States* v. *Warner*, 498 F.3d 666, 691, 698 (7th Cir. 2007), cert. denied, 128 S. Ct. 2500 (2008); *United States* v. *Alkins*, 925 F.2d 541, 549-550 (2d Cir. 1991). Simple misrepresentations or omissions unaccompanied by the requisite subjective intent never amount to fraud. See *United States* v. *Kincaid-Chauncy*, 556 F.3d 923, 946 (9th Cir.), cert. denied, No. 09-5076 (Dec. 7, 2009). Before and after *McNally*, courts have agreed on this point. See *United States* v. *Sawyer*, 85 F.3d 713, 732 n.16 (1st Cir. 1996) ("prior to *McNally*, courts endorsing the honest-services mail fraud theory *invariably* required some showing of deceit which is inherent in the term 'fraud'") (emphasis added).

The specific intent requirement eliminates fair notice concerns; a defendant can hardly complain of a lack of fair warning when he intends to deceive. See *Colautti* v. *Franklin*, 439 U.S. 379, 395 & n.13 (1979); *Screws* v. *United States*, 325 U.S. 91, 101-102 (1945) (plurality opinion). Because "statutes must deal with untold and unforeseen variations in factual situations," this Court demands "no more than a reasonable degree of certainty" and so has long held that the "presence of culpable intent as a necessary element of the offense" significantly undermines vagueness concerns. *Boyce Motor Lines, Inc.* v. *United States*, 342 U.S. 337, 340, 342 (1952).

The intent element of Section 1346 shields a public or private defendant whose nondisclosure of a conflict occurs because he believes that he has no conflict or disclosure duty. A defendant cannot breach a duty that he does not know he has (even though he need not know the legal source of the duty). Nor does Section 1346 cover a fiduciary whose conflict is already known to the person or persons to whom he owes a duty of loyalty, or whose actions are otherwise taken without deceptive intent.

c. *Materiality*. Materiality is an element of the mail fraud offense and therefore of honest services fraud. *Neder*, 527 U.S. at 25. The materiality element requires that the defendant's deceptive conduct be of a kind that may influence the victim to change his behavior. *Id.* at 22-23. That requirement limits the offense to deceptive breaches of duty that have a sufficient level of importance to the victim's affairs; insignificant breaches are not actionable. See *Rybicki*, 354 F.3d at 146. In the private sector, a misrepresentation or omission will ordinarily be material if it can cause the victim harm (economic or otherwise) by inducing him to act or to refrain from acting in a particular way. In many public sector cases, such as those involving legislators, a deception will be material if it makes a difference in the way the public or other officials assess whether the office-holder has placed his self-interest above that of the public.

### *3. Pre-*McNally *honest services fraud clearly encompassed bribes and kickbacks, as well as undisclosed financial conflicts of interest furthered by official action*

Based on the three elements of honest services fraud, pre-*McNally* cases exhibit a solid consensus on two categories of conduct.

a. First, the acceptance of bribes or kickbacks by a public official or private employee constitutes honest-services fraud. The pre-*McNally* cases so holding are legion.[4] No pre-*McNally* decision ever questioned this proposition, and post-*McNally* honest-services cases uniformly recognize that taking bribes and kickbacks is one of the "two principal theories" of honest-services fraud. *Kincaid-Chauncey*, 556 F.3d at 942; *United States* v. *Urciuoli*, 513 F.3d 290, 295 n.3 (1st Cir. 2008); *United States* v. *Kemp*, 500 F.3d 257, 279 (3d Cir. 2007), cert. denied, 128 S. Ct. 1329 (2008); *United States* v. *Brown*, 459 F.3d 509, 521 (5th Cir. 2006), cert. denied, 550 U.S. 933 (2007); *Rybicki*, 354 F.3d at 139-141; *United States* v. *Woodward*, 149 F.3d 46, 57 (1st Cir. 1998), cert. denied, 525 U.S. 1138 (1999). Indeed, petitioner concedes that "bribes and kickbacks were * * * paradigm cases." Pet. Br. 49. Petitioner does not assert that the courts have had any difficulty applying Section 1346 in cases involving bribery or kickback schemes, or that a reasonable person could have any doubt that such schemes are covered by the statute.

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[4] See, *e.g.*, *United States* v. *Lovett*, 811 F.2d 979 (7th Cir. 1987); *United States* v. *Bruno*, 809 F.2d 1097 (5th Cir.), cert. denied, 481 U.S. 1057 (1987); *United States* v. *Price*, 788 F.2d 234 (4th Cir. 1986), vacated *sub nom. McMahan* v. *United States*, 483 U.S. 1015 (1987); *United States* v. *Schwartz*, 785 F.2d 673 (9th Cir.), cert. denied, 479 U.S. 890 (1986); *United States* v. *Qaoud*, 777 F.2d 1105 (6th Cir. 1985), cert. denied, 475 U.S. 1098 (1986); *United States* v. *Bonansinga*, 773 F.2d 166 (7th Cir. 1985), cert. denied, 476 U.S. 1160 (1986); *United States* v. *Murphy*, 768 F.2d 1518 (7th Cir. 1985), cert. denied, 475 U.S. 1012 (1986); *United States* v. *Conner*, 752 F.2d 566 (11th Cir.), cert. denied, 474 U.S. 821 (1985); *United States* v. *Alexander*, 741 F.2d 962 (7th Cir. 1984); *United States* v. *Venneri*, 736 F.2d 995 (4th Cir.), cert. denied, 469 U.S. 1035 (1984); *United States* v. *Gorny*, 732 F.2d 597 (7th Cir. 1984); *United States* v. *Gann*, 718 F.2d 1502 (10th Cir. 1983), cert. denied, 469 U.S. 863 (1984); *United States* v. *Whitt*, 718 F.2d 1494 (10th Cir. 1983); *United States* v. *Primrose*, 718 F.2d 1484 (10th Cir. 1983), cert. denied, 466 U.S. 974 (1984); *United States* v. *Pecora*, 693 F.2d 421 (5th Cir. 1982), cert. denied, 462 U.S. 1119 (1983); *United States* v. *Washington*, 688 F.2d 953 (5th Cir. 1982); *United States* v. *Boffa*, 688 F.2d 919 (3d Cir. 1982), cert. denied, 465 U.S. 1066 (1983); *United States*

Second, deprivation of honest services encompasses undisclosed self-dealing by a public official or private employee—*i.e.*, the taking of official action by the em-

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v. *Margiotta*, 688 F.2d 108 (2d Cir. 1982), cert. denied, 461 U.S. 913 (1983); *United States* v. *Bottom*, 638 F.2d 781 (5th Cir. 1981); *United States* v. *Bohonus*, 628 F.2d 1167 (9th Cir.), cert. denied, 447 U.S. 928 (1980); *United States* v. *Mandel*, 591 F.2d 1347 (4th Cir.), vacated, 602 F.2d 653 (4th Cir. 1979) (per curiam), cert. denied, 445 U.S. 961 (1980); *United States* v. *Craig*, 573 F.2d 455 (7th Cir. 1977), cert. denied, 439 U.S. 820 (1978); *United States* v. *Rauhoff*, 525 F.2d 1170 (7th Cir. 1975); *United States* v. *Bryza*, 522 F.2d 414 (7th Cir. 1975), cert. denied, 426 U.S. 912 (1976); *United States* v. *Barrett*, 505 F.2d 1091 (7th Cir. 1974), cert. denied, 421 U.S. 964 (1975); *United States* v. *Staszcuk*, 502 F.2d 875 (7th Cir. 1974), cert. denied, 423 U.S. 837 (1975) ; *United States* v. *Isaacs*, 493 F.2d 1124 (7th Cir.), cert. denied, 417 U.S. 976 (1974); *United States* v. *George*, 477 F.2d 508 (7th Cir.), cert. denied, 414 U.S. 827 (1973); *Shushan* v. *United States*, 117 F.2d 110 (5th Cir.), cert. denied, 313 U.S. 574 (1941).

ployee that furthers his own undisclosed financial interests while purporting to act in the interests of those to whom he owes a fiduciary duty. Although not as numerous as the bribery and kickback cases, the pre-*McNally* cases involving undisclosed self-dealing were abundant.[5] Indeed, the theory of liability in *McNally* itself was nondisclosure of a conflicting financial interest. 483 U.S. at 355 (jury instructions required a finding that actual or de facto officials used authority to direct commissions on state-purchased insurance to entities in which they had an ownership interest "without disclosing that interest to persons in state government whose actions or deliberations could have been affected by the disclosure"); *id.* at 361 n.9 ("The violation asserted is the failure to disclose their financial interest."). Congress clearly intended to revive the nondisclosure theory invalidated in *McNally* itself.

b. Petitioner argues that, if his facial vagueness challenge is rejected, Section 1346 should be strictly limited to cases involving bribes and kickbacks to "avoid[] redundancy with traditional money or property fraud." Br. 49.

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[5] See *United States* v. *Kwiat*, 817 F.2d 440 (7th Cir.), cert. denied, 484 U.S. 924 (1987); *United States* v. *Holzer*, 816 F.2d 304 (7th Cir.), vacated, 484 U.S. 807 (1987); *United States* v. *Dick*, 744 F.2d 546 (7th Cir. 1984); *United States* v. *Siegel*, 717 F.2d 9 (2d Cir. 1983); *United States* v. *Feldman*, 711 F.2d 758 (7th Cir.), cert. denied, 464 U.S. 939 (1983); *United States* v. *Ballard*, 663 F.2d 534 (5th Cir. 1981), modified on reh'g, 680 F.2d 352 (5th Cir. 1982); *United States* v. *Von Barta*, 635 F.2d 999 (2d Cir. 1980), cert. denied, 450 U.S. 998 (1981); *United States* v. *McCracken*, 581 F.2d 719 (8th Cir. 1978); *United States* v. *Brown*, 540 F.2d 364 (8th Cir. 1976); *United States* v. *Bush*, 522 F.2d 641 (7th Cir. 1975), cert. denied, 424 U.S. 977 (1976); *United States* v. *Keane*, 522 F.2d 534 (7th Cir. 1975), cert. denied, 424 U.S. 976 (1976); *Post* v. *United States*, 407 F.2d 319 (D.C. Cir. 1968), cert. denied, 393 U.S. 1092 (1969); *Epstein* v. *United States*, 174 F.2d 754 (6th Cir. 1949).

Petitioner's argument assumes that an employee's acceptance of a bribe or kickback does not ordinarily deprive his employer of money or property, whereas self-dealing schemes are "effectively money or property fraud cases anyway." Br. 51.

Pre-*McNally* non-disclosure cases refute petitioner's argument. *McNally*, the decision Section 1346 was written to reverse, described the scheme at issue as involving "self-dealing," while making clear that it involved no showing that the state "was defrauded of any money or property." 483 U.S. at 352, 360. See also, *e.g.*, *United States* v. *Keane*, 522 F.2d 534 (7th Cir. 1975) (city alderman bought properties through nominees and voted on matters that favorably affected the properties without disclosing his interest), cert. denied, 424 U.S. 976 (1976); *United States* v. *O'Malley*, 707 F.2d 1240 (11th Cir. 1983) (insurance commissioner steered insurance companies to use law firm in which he had an interest). In these cases and others involving self-dealing, the scheme will not necessarily deprive the persons to whom a duty is owed of money or property.

Even petitioner's more modest proposal to limit self-dealing schemes to the direction of money or property to third parties in which the official has an undisclosed interest, Br. 52 n.14, is flawed. For example, a vote to rezone property, when the public official secretly owns property interests in that location, involves no government expenditures to a third party. Nor does a legislator's voting down a tax increase to benefit the interests of a party from whom the legislator is soliciting employment involve expenditures. Yet both forms of undisclosed self-dealing are core honest services frauds.

### *4. Neither pre-*McNally *decisional conflicts nor the government's litigation positions render Section 1346 unconstitutionally vague*

Petitioner incorrectly claims (Br. 39-44) that conflicts in pre-*McNally* case law and the history of government prosecutions create uncertainty about the reach of the honest services statute.

a. Petitioner significantly overstates the extent to which the courts of appeals differed about the scope of an honest services offense before *McNally*. Most importantly, petitioner identifies no disagreement about the core elements that constitute the statutory violation, as discussed above. And even as to the peripheral issues petitioner raises, the disagreement was not so severe as to render the statute void on its face.

*Whether a Violation of State Law Is Required.* Before *McNally*, the courts of appeals agreed that an honest-services conviction need not be based on a violation of state law. See, *e.g.*, *United States* v. *Mandel*, 591 F.2d 1347, 1361 (4th Cir.), vacated, 602 F.2d 653 (4th Cir. 1979), cert. denied, 445 U.S. 961 (1980); see *McNally*, 483 U.S. at 355 (citing *Mandel* as illustrative of courts of appeals' honest-services jurisprudence); *id.* at 377 n.10 (Stevens, J., dissenting) (citing *Mandel* and other decisions holding that the mail fraud statute forbids schemes that do not violate state law). In *McNally* itself, the Court recognized that the theory of liability at issue posited a nondisclosure violation "even if state law did not require [disclosure]." *Id.* at 361 n.9. Although *United States* v. *Rabbitt*, 583 F.2d 1014, 1026 (8th Cir. 1978), cert. denied, 439 U.S. 1116 (1979), mentioned in passing the absence of an affirmative disclosure duty under state law as a factor in reversing a conviction, the Eighth Circuit had previously recognized that "[t]he fact that a scheme may or may not violate State law does not determine whether it is within the proscriptions of [Section 1341]." *United States* v. *McNeive*, 536 F.2d 1245, 1247 n. 2 (1976) (citation omitted).

*Whether Contemplated Economic Harm Was Required.* As the government's brief explained in *Black* v. *United States*, No. 08-8768, at 28-34, only one pre-*McNally* outlier held that the honest services offense had a distinct element of contemplated economic harm. *United States* v. *Lemire*, 720 F.2d 1327, 1337 (D.C. Cir. 1983), cert. denied, 467 U.S. 1226 (1984). Most cases treated contemplated harm as a natural facet of materiality and did not state that the harm had to be "economic." See *United States* v. *Feldman*, 711 F.2d 758, 763 (7th Cir.), cert. denied, 464 U.S. 939 (1983); *United States* v. *Ballard*, 663 F.2d 534, 540 (5th Cir. 1981), modified on reh'g, 680 F.2d 352 (5th Cir. 1982); *United States* v. *Von Barta*, 635 F.2d 999, 1005 n.14 (2d Cir. 1980), cert. denied, 450 U.S. 998 (1981); *Epstein*, 174 F.2d 754, 768 (6th Cir. 1949). And even *Lemire* believed that its formulation "only makes more explicit what [other courts] meant by a 'material non-disclosure or misrepresentation.'" 720 F.2d at 1337.

*Whether Private- and Public-Sector Honest Services Fraud Had the Same Elements.* The cases petitioner cites establish nothing more than the uncontroversial proposition that the duties of loyalty for private and public officials may be distinct and that what is material may correspondingly differ. See *Lemire*, 720 F.2d at 1337 n. 13 ("[p]ublic officials may be held to a higher standard of public trust"). *United States* v. *Price*, 788 F.2d 234 (4th Cir. 1986), vacated *sub nom. McMahan* v. *United States*, 483 U.S. 1015 (1987), did not disagree; it held only that in a private-sector case involving elected labor union officials, the public-sector standard was the better fit.

*Whether Honest Services Violations Require Official Action.* Contrary to petitioner's contention, courts did not disagree on whether honest-services violations require "official action." Misuse of official position was clearly required for a breach of the duty of loyalty. Consistent with that principle, the court in *Rabbitt* reasoned that a state legislator did not commit honest-services fraud by recommending an architectural firm for state business when his official duties did not include awarding state contracts to architects, and when he had not in any way used the powers of his office to advance the contracts. 583 F.3d at 1026. In *United States* v. *Bush*, 522 F.2d 641(7th Cir. 1975), cert. denied, 424 U.S. 977 (1976), the court upheld the honest-services conviction of the press secretary of the Chicago mayor, reasoning that the press secretary had violated his duty of loyalty by "us[ing] his official position" within the mayor's "inner circle" to influence a contract decision. *Id.* at 647. The holdings of the two cases were not different in principle; in *Bush* the court merely found that the defendant had used his official position in a way the defendant in *Rabbit* had not. That sort of fact-specific variation is hardly peculiar to the honest services fraud statute.

*Whether a Misuse of Fiduciary Position Is Required.* Before *McNally*, honest services cases consistently required breaches of fiduciary duties. Petitioner cites *United States* v. *Bronston*, 658 F.2d 920, 926 (2d Cir.), cert. denied, 456 U.S. 915 (1981), for its statement that the defendant's "use[]" of his "fiduciary relationship" was not a prerequisite to conviction. *Id.* at 926. But the court found that the defendant had "breach[ed] his fiduciary duty" to his law firm's client by concealing his representation of a client with conflicting interests, and it held only that no further showing was necessary that the lawyer misused information from the law firm's client. *Id.* at 929. In any event, the court found that the evidence supported "an inference that such activity occurred." *Ibid.*

b. Petitioner asserts that in the lower courts here, as well as in other cases, the government has advanced positions concerning the nature of honest services fraud that differ from its position in this Court. Br. 42-44. That assertion does not establish any constitutional infirmity in the honest services statute. As lower courts address and resolve issues of statutory construction, and until the Solicitor General has had occasion to adopt a formal position, the government may over time make different arguments concerning the scope or meaning of a statute. That type of development occurring in the course of handling cases involving distinctive fact patterns or raising legal issues of first impression is an ordinary incident of the litigation process, and it does not suggest that the statute is unconstitutionally vague. As the Second Circuit reasoned in rejecting a vagueness challenge, "[p]rosecutors sometimes make mistakes as to the reach of criminal statutes; courts correct them." *Rybicki*, 354 F.3d at 143.

### B. Petitioner Conspired To Commit Honest Services Wire Fraud

Although petitioner's prosecution did not involve the prototypical secret, outside conflicting financial interests that are characteristic of nondisclosure honest services cases, the conduct petitioner conspired to commit constitutes honest services wire fraud under the principles outlined above.

1. Petitioner had, and acted upon, his personal financial interests, which conflicted with those of the shareholders to whom he owed a fiduciary duty. The company and its shareholders attempted to align their long-term interests with petitioner's by linking his compensation to stock price. But the obvious premise of that arrangement was that petitioner would act to maximize shareholder wealth. Petitioner subverted that premise, and placed his interests in conflict with that of the shareholders, when, for his own financial benefit, he engaged in an undisclosed scheme to artificially inflate the stock's price by deceiving the shareholders and others about the company's true financial condition. That conduct constituted fraud. The only question here is whether the public nature of petitioner's compensation scheme prevents his conduct from constituting honest services fraud. It does not. Although petitioner's basic compensation scheme was public, his scheme to artificially inflate the company's stock price by misrepresenting its financial condition, in order to derive additional personal benefits at the expense of shareholders, was not. Petitioner's deception deprived shareholders of the information they needed to make informed decisions and thereby defrauded them of his honest services.

2. Petitioner argues that the government was required but failed to prove as an element of the wire fraud statute that he acted for private gain. That argument is incorrect both legally and factually.

As a legal matter, the critical element is the defendant's undisclosed *personal conflicting financial interests* furthered by official action, not the defendant's subjective motive. No pre-*McNally* court of appeals decision, whether in a public- or a private-sector case, held that intended private gain was an *element* of honest-services fraud. To be sure, the vast majority (if not all) pre-*McNally* honest-services cases did involve self-enrichment schemes. But, as the Seventh Circuit observed before *McNally*, "[w]hile most cases have involved some financial gain to the one breaching his fiduciary duty, they have not *required* financial gain." *United States* v. *Dick*, 744 F.2d 546, 551 (7th Cir. 1984) (emphasis in original). "[T]he notion of misuse of office for personal gain adds little clarity to the scope of § 1346," but instead "adds [only] an extra layer of unnecessary complexity to the inquiry." *United States* v. *Panarella*, 277 F.3d 678, 692 (3d Cir.), cert. denied, 537 U.S. 819 (2002).[6]

As a factual matter, the indictment alleged, and the evidence at trial showed, that petitioner's scheme resulted in immense private gain. In a section entitled "Defendants' Profit as a Result of the Scheme," the conspiracy count expressly enumerated the ways in which petitioner profited from the fraudulent scheme: through the receipt of salary and bonuses, which were tied to Enron's stock price, and through the sale of approximately $200 million in Enron stock, which netted him $89 million. J.A. 280a-281a. Far from conceding that petitioner sought to further Enron's "best interests," as petitioner erroneously asserts (Br. 57), the government explained in its opening statement that the honest-services fraud scheme entailed private gain to the conspirators from the sale of Enron stock:

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[6] Petitioner relies (Br. 53-55) on cases describing the honest services offense as involving private gain—as did *McNally* itself, 483 U.S. at 355. But that descriptive language does not create an element. Even in *United States* v. *Dixon*, 536 F.2d 1388 (2d Cir. 1976), what was missing was a conflict of interest of any kind. And Judge Friendly's observation that use of "a private fiduciary position to obtain direct pecuniary gain is within the mail fraud statute," *id*. at 1399, does not establish that it is required by the mail fraud statute.

> [T]hese two men [petitioner and Lay] chose to violate their duties of loyalty and trust by lying over and over again about the true financial condition of Enron, concealing from [the] employees and investors information which was critical for them to make good decisions about what to do with their own stock; and at the same time, they repeatedly put their own interests in front of those investors by self-dealing, by selling their own stock.

R. 14758. At trial, petitioner stipulated that he repeatedly sold multi-million dollar quantities of his Enron holding during the course of the fraudulent scheme, see R. 25211-25214—sales that enabled him to benefit from the artificially inflated stock price. The conduct proved in this case thus satisfies any statutory requirement of private gain.

### C. Any Error In The Honest Services Fraud Object Was Harmless Beyond A Reasonable Doubt

Even if this Court were to find error in the honest services object of the conspiracy, any juror who voted for conviction based on that object also would have found petitioner guilty of conspiring to commit securities fraud. Therefore, any error was harmless.

1. In *Yates* v. *United States*, 354 U.S. 298 (1957), this Court held that when one of the objects of a multi-object conspiracy count is legally invalid, the conspiracy conviction is constitutionally flawed. Like other instructional defects, however, a *Yates* violation is subject to harmless error analysis. See, *e.g.*, *Neder*, *supra*; *California* v. *Roy*, 519 U.S. 2 (1996) (per curiam); *Pope* v. *Illinois*, 481 U.S. 497 (1987); *Rose* v. *Clark*, 478 U.S. 570 (1986). This

Court has so held in the collateral review context, *Hedgpeth* v. *Pulido*, 129 S. Ct. 530 (2008) (per curiam), and the same principle applies on direct review.

2. The jury instructions on the honest services object required the jurors to find that the scheme to defraud "employed false material representations." R. 36423. The misrepresentations alleged in the indictment and relied on by the government at trial consisted of petitioner's statements about the financial condition of Enron and its various components. Any juror who found that petitioner committed honest services fraud must therefore have found that he made those statements and that they were false. Those same misstatements provided the basis for the securities fraud object of the conspiracy. Thus, any juror finding that the government proved the honest services object of the conspiracy also would have found that the government proved the securities fraud object. Similarly, the jury necessarily found that petitioner had committed the conduct underlying the securities fraud object because it found him guilty on the 12 substantive securities fraud counts, which were based on many of the same misrepresentations that formed the basis for the conspiracy charge. Accordingly, the jury's verdict on the conspiracy count would have been the same without the honest-services theory. *Neder*, 527 U.S. at 17.

## CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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JANUARY 2010

# APPENDIX

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CRIMINAL NUMBER H-04-025

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

RICHARD A. CAUSEY, JEFFERY K. SKILLING, AND
KENNETH L. LAY, DEFENDANTS

[Filed: Jan. 19, 2005]

## MEMORANDUM AND ORDER

Pending before the court are the Joint Motion of Defendants Jeffery K. Skilling and Richard A. Causey to Transfer Venue (Docket Entry No. 196) and Defendant Kenneth L. Lay's Declaration of Adoption of Jeffrey Skilling's Motion to Transfer Venue (Docket Entry No. 195). Defendants argue that this case should be transferred to another venue (e.g., Atlanta, Denver, or Phoenix) because they will be unable to receive a fair and impartial trial in Houston. For the reasons explained below, the motion will be denied.

## I. Introduction

The defendants in this action are charged in a 53-count Second Superseding Indictment (SSI) (Docket Entry No. 97)—either jointly or individually—with conspiracy, securities fraud, wire fraud, bank fraud, insider trading, money laundering, and making false statements to banks. The SSI alleges that the defendants served in various executive positions at Enron, i.e., that: Lay served as Chief Executive Officer (CEO) and Chairman of the Board of Directors from Enron's formation in 1986 until February of 2001 when he stepped down as CEO and continued as Chairman; Skilling served as President and Chief Operating Officer (COO) from January of 1997 until February of 2001, and served as President and CEO from February of 2001 until August of 2001 when he resigned; and Causey served in various positions from 1992 until 1998 when he became Enron's Chief Accounting Officer (CAO). (SSI ¶¶ 6-8) The offenses charged in the SSI arise from an alleged scheme to deceive the investing public, including Enron's shareholders, the Securities Exchange Commission (SEC), and others

> about the true performance of Enron's businesses by: (a) manipulating Enron's publicly reported financial results; and (b) making public statements and representations about Enron's financial performance and results that were false and misleading in that they did not fairly and accurately reflect Enron's actual financial condition and performance, and they omitted to disclose facts necessary to make those statements and representations fair and accurate.

(SSI ¶ 5)

## II. Transfer to Another District

Defendants argue that this case should be transferred to Atlanta, Denver, Phoenix, or another comparable venue because "[a]bsent a change in venue, Skilling and his co-defendants cannot receive a fair trial."[1] The government disagrees.[2]

### A. Applicable Law

1. *United States Constitution*

Article III § 2 cl. 3 of the United States Constitution provides that "[t]he Trial of all Crimes . . . shall be held in the State where the said Crimes shall have been committed." The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed." U.S. Constitution, Amend. VI. Nevertheless, since the Due Process Clause of the Fifth Amendment requires that the prosecution of federal crimes be fundamentally fair, the place of trial provisions in Article III and the Sixth Amendment must yield to the right to an impartial jury. *See United States v. Valenzuela-Bernal*, 102 S. Ct. 3440, 3449 (1982) ("Due process guarantees that a criminal defendant will be treated with 'that fundamental fairness essential to the very concept of justice.'") (quoting *Lisenba v. People of State of California*, 62 S. Ct. 280, 290 (1941)).

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[1] Memorandum in Support of Joint Motion to Transfer Venue, Docket Entry No. 197, p. 1.

[2] See Government's Memorandum of Law in Response to Defendants' Joint Motion to Transfer Venue, Docket Entry No. 231.

2. *Federal Rule of Criminal Procedure 21(a)*

In situations where community prejudice threatens to deprive a criminal defendant of a fair trial, Federal Rule of Civil Procedure 21(a) provides for a change of venue. The rule states that

> [u]pon the defendant's motion, the court must transfer the proceeding against that defendant to another district if the court is satisfied that so great a prejudice against the defendant exists in the transferring district that the defendant cannot obtain a fair and impartial trial there.

Fed. R. Civ. P. 21(a). Since the constitutional requirement for trial in the state and district where the offense is alleged to have been committed is a right provided to the defendant by Article III and the Sixth Amendment, a change of venue may be granted on a defendant's motion. *See* Notes to Subdivisions (a) and (b) following Rule 21, ¶ 3 (recognizing that filing of motion waives right to trial in the state and district where the offense was committed). The decision to transfer venue is "committed to the sound discretion of the trial court." *United States v. Harrelson*, 754 F.2d 1153, 1159 (5th Cir.), *cert. denied*, 106 S. Ct. 277 and 599 (1985). Every claim of potential jury prejudice due to publicity must turn upon its own facts. *See Irvin v. Dowd*, 81 S. Ct. 1639, 1642 (1961) ("necessity for transfer will depend upon the totality of the surrounding facts"). Defendants bear the burden of showing that their motion for change of venue to another district should be granted. *See United States v. Smith-Bowman*, 76 F.3d 634, 637 (5th Cir.), *cert. denied*, 116 S. Ct. 2537 (1996).

3. *Supreme Court Precedent*

Jury selection has not started and no trial date has been set in this case. The only case that the court has found in which the Supreme Court has reversed a conviction solely on the basis of community prejudice arising from pretrial publicity without examining the voir dire record for actual jury prejudice is *Rideau v. State of Louisiana*, 83 S. Ct. 1417 (1963).

> In *Rideau* the Supreme Court, "without pausing to examine a particularized transcript of the voir dire examination of members of the jury," 83 S. Ct. at 1419-1420, overturned the conviction of a habeas petitioner whose uncounselled confession had been filmed, recorded, and then broadcast three times by the local television station to large audiences in the Louisiana parish from which the jury was drawn and in which he was tried two months later. The principle distilled from this holding by courts subsequently discussing the case is that where a defendant adduces evidence of inflammatory, prejudicial pretrial publicity that so pervades or saturates the community as to render virtually impossible a fair trial by an impartial jury drawn from that community, "[jury] prejudice is presumed and there is no further duty to establish bias."

*Mayola v. State of Alabama*, 623 F.2d 992, 996-997 (5th Cir. 1980), *cert. denied*, 101 S. Ct. 1986 (1981) (quoting *United States v. Capo*, 595 F.2d 1086, 1090 (5th Cir. 1979), *cert. denied sub nom. Lukefar v. United States*, 100 S. Ct. 660 (1980)). Relying on principles distilled from *Rideau* the Fifth Circuit has explained that

> [g]iven that virtually every case of any consequence will be the subject of some press attention . . . the

> *Rideau* principle of presumptive prejudice is only rarely applicable, and is confined to those instances where the petitioner can demonstrate an extreme situation of inflammatory pretrial publicity that literally saturated the community . . .

*United States v. Lipscomb*, 299 F.3d 303, 344-345 (5th Cir. 2002) (citing *Mayola*, 623 F.2d at 997). *See also Capo*, 595 F.2d at 1090- 1091 & n.4 ("The cases in which such presumptive prejudice has been found are those where prejudicial publicity so poisoned the proceedings that it was impossible for the accused to receive a fair trial by an impartial jury."). Moreover, in all but the most extreme cases, the *Rideau* presumption is rebuttable, and the government may demonstrate at voir dire that an impartial jury can be impaneled. *See Mayola*, 623 F.2d at 1000-1001. *See also United States v. Blom*, 242 F.3d 799, 803 (8th Cir.), *cert. denied*, 122 S. Ct. 184 (2001) ("When pretrial publicity is the issue, [courts] engage in a two-tiered analysis. At the first tier, the question is whether pretrial publicity was so extensive and corrupting that a reviewing court is required to presume unfairness of constitutional magnitude. . . . Because our democracy tolerates, even encourages, extensive media coverage of crimes . . . the presumption of inherent prejudice is reserved for rare and extreme cases. In all other cases, the change-of-venue question turns on the second tier of . . . analysis, whether the voir dire testimony of those who bec[o]me trial jurors demonstrate[] such actual prejudice that it [i]s an abuse of discretion to deny a timely change-of-venue motion.") (citations omitted)). *Sheppard v. Maxwell*, 86 S. Ct. 1507, 1522 (1966).

### B. Analysis

Defendants argue that this case should be transferred because "unlike any other venue, voir dire and other lesser remedies will be wholly inadequate to eliminate the pervasive latent biases that exist in Houston against Skilling and his co-defendants."[3] The government argues that defendants' evidence is not sufficient to raise a presumption of prejudice because Houston, as the United States' fourth largest city, provides a sizable jury pool from which twelve fair and impartial people can be found to serve on the jury.[4] Meticulous review of all of the evidence and arguments presented by the defendants persuades the court that they have failed to raise a presumption of prejudice consistent with the principles established by *Rideau* and its progeny.

#### 1. *Presumption of Prejudice*

"Prejudice will be presumed when the defendant produces evidence of pervasive community prejudice in the form of highly inflammatory publicity or intensive media coverage." *United States v. O'Keefe*, 722 F.2d 1175, 1180 (5th Cir. 1983) (citing *Capo*, 595 F.2d at 1090). *See also Spivey v. Head*, 207 F.3d 1263, 1270 (11th Cir.), *cert. denied*, 121 S. Ct. 660 (2000) ("To establish that pretrial publicity prejudiced [defendant] without an actual showing of prejudice in the jury box, he must show first that the pretrial publicity was sufficiently prejudicial and inflammatory and second that the prejudicial pretrial publicity saturated the community where the trial was being held.").

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[3] Memorandum in Support of Joint Motion to Transfer Venue, Docket Entry No. 197, p. 1.

[4] See Government's Memorandum of Law in Response to Defendants' Joint Motion to Transfer Venue, Docket Entry No. 231, pp. 19-20.

> When pretrial publicity is the basis for a defendant's motion to transfer to another district under Rule 21, a trial court errs as a matter of law in denying such a motion only if the defendant can show that pretrial publicity inflamed the jury pool, pervasively prejudiced the community against the defendant, probatively incriminated the defendant, or exceeded "the sensationalism inherent in the crime."

*Lipscomb*, 299 F.3d at 343 (quoting *United States v. Parker*, 877 F.2d 327, 331 (5th Cir.), *cert. denied*, 110 S. Ct. 199 (1989).

Asserting that they have been demonized in Houston, that Enron's rise and fall has special symbolic and cultural importance for the Houston area, and that Enron's collapse has had serious negative effects on the local economy, defendants argue that the Houston jury pool has an emotional and potentially economic interest in supporting the victims of Enron and making them whole by convicting the defendants. Defendants' assertions are supported by affidavits from expert witnesses[5] and hundreds of exhibits drawn primarily from local news reports.[6] Defendants argue that the effect of Enron's collapse on members of the local jury pool was immediate and devastating: Thousands lost their jobs, many more lost their savings, local businesses suffered, creditors went unpaid, employees in related or dependent businesses lost their jobs, local charities lost funding, and everyone felt betrayed.[7] Defendants argue that because a high percentage of victims and witnesses of Enron's collapse reside in Houston, the collapse of Enron and the lawsuits that it has generated, including *inter alia* this case, have received extensive publicity from local news outlets.

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[5] See Declaration of Dr. Stephen Klineberg, Docket Entry No. 200 (a sociologist who has analyzed Enron's bankruptcy and social pressures alleged to influence local jurors); Amended Declaration and Supplemental Declaration of Dr. Phillip K. Anthony, Docket Entry Nos. 217 and 252 (a polling and jury research expert who has conducted a comparative study of relevant community attitudes in Houston, Phoenix, Denver, and Atlanta); Declaration and Supplemental Declaration of Mr. Russell Scott Armstrong, Docket Entry Nos. 203 and 251 (a media expert who has compared Houston news coverage to coverage in other venues); Declaration and Supplemental Declaration of Dr. Edward Bronson, Docket Entry Nos. 199 and 254 (a social science expert who has analyzed jury attitudes towards defendants in Houston, Atlanta, Denver, and Phoenix); and Declaration of Mr. Roy Weinstein,

(a) Inflammatory Publicity

Publicity is "inflammatory" if it "[t]end[s] to cause strong feelings of anger, indignation, or other type of upset; [or] tend[s] to stir the passions." *Black's Law Dictionary*, 782 (7th ed. 1999). Courts have characterized "inflammatory publicity" as publicity that "prejudiced the community against the defendant, probatively incriminated the defendant, or exceeded 'the sensationalism inherent in the crime.'" *Lipscomb*, 299 F.3d at 343

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Docket Entry No. 201 (an economist who discusses the vested economic interest members of the local jury pool may have—or perceive they have—in convicting the defendants). See also Declaration of Phillip K. Anthony in Support of Ken Lay's Motion to Transfer Venue, Docket Entry No. 253.

[6] See Declaration and Supplemental Declaration of David J. Marroso, Docket Entry Nos. 202 and 256, consecutively numbered exhibits consisting of copies of newspaper articles cited in defendants' memorandum in support of motion to transfer venue.

[7] Memorandum in Support of Joint Motion to Transfer Venue, Docket Entry No. 197, pp. 1-2.

(quoting *Parker*, 877 F.2d at 331). *See also Murphy v. Florida*, 95 S. Ct. 2031, 2035 (1975) ("In *Irvin v. Dowd* the rural community in which the trial was held had been subjected to a barrage of inflammatory publicity . . . including information on the defendant's prior convictions, his confession to 24 burglaries and six murders including the one for which he was tried, and his unaccepted offer to plead guilty in order to avoid the death sentence."); *Patton v. Yount*, 104 S. Ct. 2885, 2889 (1984) (characterizing inflammatory publicity as publicity capable of creating a "wave of public passion").

Unlike many of the cases cited by defendants, the facts of this case are neither heinous nor sensational. Defendants have, however, documented incidents in which less-than-objective language was used in news reports either about them or about this case. Examples relating to Skilling include the *Houston Chronicle*'s characterization of Skilling as the "Ultimate Enron Defendant,"[8] and the *Houston Press*'s characterization of him as "Best Local Boy Gone Bad."[9] Examples relating to Lay include the *Texas Monthly*'s award of the "Bum Steer of the Year" to him in 2002,[10] and former Enron employees' comparison of him to Satan, Osama Bin Laden, and Adolf Hitler.[11] Additional examples include a story by the *Houston Chronicle*'s business columnist that ridiculed Lay's "doofus defense" and speculated that when his lawyers' "smoke screen clears, they may have succeeded in arguing Lay was not guilty by reason of ignorance. We all know better."[12] Defendants argue that the *Houston Chronicle* has ridiculed Skilling's explanations for the cause of Enron's collapse and published statements from former Enron employees who have accused Skilling of lying to Congress.[13]

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[8] *Id.* at 14 (citing a September 12, 2004, special section of the *Houston Chronicle* titled "Ultimate Houston," Marroso Exhibit No. 28).

[9] *Id.* at 14-15 (citing the September 23, 2004, edition of the *Houston Press*, Marroso Exhibit No. 29).

[10] *Id.* (citing January 2003 edition of *Texas Monthly*, Marroso Exhibit No. 34).

[11] *Id.* at 13 (citing July 8, 2004, article in the *San Antonio Express-News*, Marroso Exhibit No. 6).

But isolated incidents of intemperate commentary about the alleged crimes and their perpetrators do not rise to the level of "inflammatory" where, as here, for the most part, the reporting appears to have been objective and unemotional. *See United States v. Allee*, 299 F.3d 996, 1000 (8th Cir. 2002) (finding no inherent prejudice in press coverage despite "understandable emotionalism"). For example, the text accompanying the *Houston Chronicle*'s characterization of Skilling as the "Ultimate Enron Defendant" illustrates the largely fact-based tone of most of the articles cited by the defendants:

> Rather than lying low, former Enron CEO Jeff Skilling keeps making news. In April he was arrested after a drunken scuffle in New York. A federal judge ordered him to stop drinking alcohol, find a job or volunteer work, and obey a curfew. Skilling has pleaded not guilty to 35 felony counts accusing him of manipulating earnings reports at Enron to inflate

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[12] *Id.* at 15-16 (citing a July 9, 2004, *Houston Chronicle* column written by Loren Steffy titled "What of Lay's claims? Answers lie in Valhalla," Marroso Exhibit No. 35).

[13] *Id.* (citing February 8, 2002, *Houston Chronicle* article titled "The Fall of Enron: It's Kind of Hard to Believe: Ex-Enron Workers Rip Skilling's Story," Marroso Exhibit No. 17).

> the company's value. As the only top Enron official to testify before lawmakers in Washington, D.C., Skilling has proclaimed his innocence, "I have nothing to hide," he said. We can't wait for the trial.[14]

Having carefully reviewed defendants' evidence, the court concludes that the pretrial publicity in this case does not approach the egregiousness present either in *Rideau* or other cases on which defendants rely. In *Rideau* a local television station aired three broadcasts of the defendant's taped confession to robbing a bank, kidnapping three of the bank's employees, and killing one of them, and the broadcasts were viewed by at least one-third and possibly as many as two-thirds of the local populace. 83 S. Ct. at 1417. In *United States v. Abrahams*, 453 F. Supp. 749, 751-753 (D. Mass. 1978), which defendants cite as an example of a case in which defendants' motion to transfer venue was granted,[15] the news reports painted

> a black and bleak picture of Mr. Abrahams. Repeatedly, in great detail, and often with lurid language, these stories describe, usually as if they were indisputable facts, all of the following alleged activity (and more) of the defendant: (1) his use of half a dozen aliases; (2) the startling discovery of his true identity; (3) his characterization by the FBI as an "armed and dangerous" fugitive; (4) his convictions for income tax fraud, defrauding another commodities dealer, and writing a $3,000 bad check; (5) the

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[14] See September 12, 2004, special section of the *Houston Chronicle* titled "Ultimate Houston," Marroso Exhibit No. 28.

[15] See Reply Memorandum of Defendants Jeffrey Skilling and Richard Causey in Support of Joint Motion to Transfer Venue, Docket Entry No. 249, pp. 5-6 & n.18, p. 8 & n.33, and p. 20 & n.104.

> charges against him, pending in two other federal courts, three state courts, and Canada, for contempt, prison escape, passport fraud, obtaining money under false pretenses, issuing worthless checks, probation violation for bond default, contributing to the delinquency of a minor, and writing numerous bad checks for large amounts; (6) his failure to appear for various court proceedings; (7) the consequent denial of bail . . .

*Id.* at 752. The news accounts in this case simply do not constitute the type of inflammatory reporting of inherently prejudicial facts (e.g., prior convictions, escapes, arrests, prior and/or subsequent indictments, and/or confessions) needed to support a claim of presumptive prejudice.

(b) Pervasive Publicity

Courts have characterized "pervasive publicity" capable of raising a presumption of jury prejudice as publicity that has "saturated the community with sensationalized accounts of the crime and court proceedings." *See Capo*, 595 F.2d at 1090.

Defendants argue that a presumption of prejudice arises in this case because of extensive Enron-related coverage by the *Houston Chronicle*, the *Houston Press*, local television networks, and other news outlets including, e.g., the *Texas Observer*, the *Houston Business Journal*, *Texas Monthly*, and internet sites. Defendants argue that a telephone survey of the Houston jury pool shows that six in ten potential jurors who have heard of this case think that the defendants are guilty.[16] Defendants present evidence showing dramatic differences, both qualitatively and quantitatively, between news coverage of Enron's collapse and at least two of the defendants in this case (Lay and Skilling) by news outlets in Houston and comparable news outlets in Atlanta, Denver, and Phoenix.[17]

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[16] *Id.* at 2.

Notoriety alone does not indicate that a change of venue is warranted. *See United States v. Dozier*, 672 F.2d 531, 545-546 (5th Cir.), *cert. denied*, 103 S. Ct. 256 (1982) (mere awareness of the allegations does not constitute prejudice); *Parker*, 877 F.2d at 330 ("[e]xposure to pretrial publicity . . . does not necessarily destroy a juror's impartiality . . . [c]onsequently . . . a change of venue should not be granted on the mere showing of widespread publicity"). The Fifth Circuit has explained that

> [i]f, in this age of instant, mass communication, we were to automatically disqualify persons who have heard about an alleged crime from serving as a juror, the inevitable result would be that truly heinous or notorious acts will go unpunished. The law does not prohibit the informed citizen from participating in the affairs of justice. In prominent cases of national concern, we cannot allow widespread publicity concerning these matters to paralyze our system of justice.

*Calley v. Callaway*, 519 F.2d 184, 210 (5th Cir. 1975), *cert. denied sub nom Calley v. Hoffmann*, 96 S. Ct. 1505 (1976). *See also Irvin*, 81 S. Ct. at 1642 ("It is not required, however, that the jurors be totally ignorant of the facts and issues involved."). To satisfy their burden of showing that there is a reasonable likelihood that prejudicial news coverage prior to trial will prevent a fair trial, defendants must demonstrate that the populace from which their jury will be drawn is widely infected by *prejudice* apart from mere *familiarity* with the case. *Mayola*, 623 F.2d at 999.

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[17] See Declaration of Russell Scott Armstrong, Docket Entry No. 203, p. 5 ¶ 10.

Unlike the petitioner in *Rideau*, who adduced evidence that his televised confession had been seen by up to two-thirds of the citizens in the Louisiana parish of 150,000 from which the jury had been drawn, defendants' evidence of adverse publicity is much less extensive. The *Houston Chronicle*, which defendants describe as the "major local paper" and whose lead on Enron-related news has largely been followed by Houston-area television stations, reaches less than "one-third of occupied households in Houston."[18] Although defendants assert that this circulation rate reaches 40%-50% of the adult population in Houston,[19] the court is not persuaded that the material published in the *Houston Chronicle* about Enron is either pervasive or largely prejudicial as opposed to factual. Although defendants cite news reports from other outlets such as the *Houston Press*, which they describe as an alternative weekly paper that reaches 300,000 readers per week, they provide no circulation figures for the other print media that they cite as having infected the local jury pool with prejudicial reports, e.g., *Texas Monthly* and the *Texas Observer*. *See Mayola*, 623 F.2d at 998 (failure to produce circulation figures or other evidence of the scope of that county's exposure to the prejudicial publicity instrumental in the court's rejection of petitioner's pretrial publicity claim); *United States v. Ricardo*, 619 F.2d 1124, 1131, 1132 (5th Cir. 1980) (failure to adduce newspaper circulation statistics instrumental in court's rejection of appellant's pretrial publicity claims).

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[18] Memorandum in Support of Joint Motion to Transfer Venue, Docket Entry No. 197, p. 14 n.45.

[19] See Reply Memorandum of Defendants Jeffrey Skilling and Richard Causey in Support of Joint Motion to Transfer Venue, Docket Entry No. 249, p. 19.

Moreover, while defendants' evidence shows that each of the local television news programs reach between 8 and 15% of the local population,[20] these figures do not come close to those in *Rideau* where one of the three televised broadcasts of the defendant's confession reached over one-third of the local population and the three broadcasts together could have reached almost two-thirds of the local population. Nor have defendants shown that the reports aired by the local television stations are any more prejudicial than the reports that appear in the local print media. The court concludes that defendants' evidence is insufficient to show that prejudicial publicity about this case has so saturated the local populace that defendants are unlikely to receive a fair trial from an impartial jury.

In addition to reports published by local news outlets, defendants rely on data from telephone surveys of the local jury pool to demonstrate the scope of the prejudice against them in the Houston community.[21] Evidence adduced from the telephone survey conducted on defendants' behalf suggests that some people in each venue surveyed have formed preliminary opinions regarding their guilt or innocence. Defendants assert that

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[20] See Exhibit 15 attached to Declaration of Russell Scott Armstrong, Docket Entry No. 203.

[21] See Declaration of Philip K. Anthony, Ph.D., in Support of Defendant Jeffrey Skilling's Motion to Transfer Venue, Docket Entry No. 217.

Questions 4-7, set forth below, comprised the "substance" of the survey:

- Question #4: Please name all of the former executives of Enron who you believe are guilty of crimes.
- Question #5: What words come to mind when you hear the name, Jeff Skilling?
- Question #6: Do you personally know anyone who has been harmed by what happened at Enron?
- Question #7: In your opinion, was the economy of the [interviewee's venue] area more affected by the collapse of Enron than other cities in the United States?[22]

Not surprisingly, responses to these four questions show that "[r]espondents in Houston were twice as likely as respondents in Atlanta and almost three times as likely as respondents in Denver and Phoenix to personally know someone who has been harmed by what happened to Enron,"[23] and "almost 70% of Houston-area residents feel their region has been harmed more [by the collapse of Enron] than any other region of the country." Although "[t]he proportion of residents mentioning Mr. Skilling [as a former Enron executive known to be guilty of crimes] in the Houston venue (12.3%) was almost five times higher than in Denver (2.7%), and Atlanta (2.6%), and nine times higher than in Phoenix (1.4%),"[24] 87.7% of the survey's Houston-area respondents did not identify Skilling when they were asked to "name all the former Enron executives you know of who are guilty of crimes."[25] Moreover, none of the data adduced by the survey presents any estimate of bias towards Causey or Lay.

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[22] *Id.* at 14-15.

[23] *Id.* at 22.

[24] *Id.* at 19.

While public opinion polls are sometimes introduced to show that community prejudice raises a presumption of prejudice that requires a change of venue, courts have commonly rejected such polls as unpersuasive in favor of effective voir dire as a preferable way to ferret out any bias. *See United States* v. Collins, 972 F.2d 1385, 1398 & n.19, and 1400 & n.24 (5th Cir. 1992), *cert. denied*, 113 S. Ct. 1812 (1993) (concluding that voir dire was adequate to ferret out jury bias even in face of poll indicating that 57% of those surveyed had heard of the case and that 90% of those who had heard of the case thought the defendant was probably or definitely guilty). *See also United States v. Malmay*, 671 F.2d 869, 876 (5th Cir. 1982) (affirming district court's denial of motion to transfer where approximately 50% of those polled believed that the charges against the defendants were true) .

The Supreme Court has explained that

> [t]o hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

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[25] *Id.*

*Irvin*, 81 S. Ct. at 1642-1643. Although in a few rare cases pretrial publicity has been held to be so inherently prejudicial that judicial instructions to the jury were insufficient to satisfy the mandate of due process, the court *is* not persuaded that the publicity in this case is sufficiently pervasive to raise such a presumption of jury prejudice. Broad and intensive public awareness was held not to have triggered the *Rideau* presumption, or to have deprived defendants of fair trials, in some of the most notorious and widely publicized cases of the last century, e.g., the My Lai murders, *Calley*, 519 F.2d at 203-213, and the high-level conspiracy to cover up the Watergate break-in, *United States v. Haldeman*, 559 F.2d 31, 60-69 (D.C. Cir. 1976), *sub nom Ehrlichman v. United States*, and *Mitchell v. United States*, *cert. denied*, 97 S. Ct. 2641 (1977).

Whether a jury is biased is a question of fact for the court to decide. *See Wainwright v. Witt*, 105 S. Ct. 844, 854-855 (1985) (juror bias determination is a question of fact, even though "[t]he trial judge is of course applying some kind of legal standard to what he sees and hears"); *Patton*, 104 S. Ct. at 2891 & n.12 (juror bias is a question of fact although "[t]here are, of course, factual and legal questions to be considered in deciding whether a juror is qualified"). Defendants have failed to persuade the court that prospective jurors who have formed preliminary opinions about the defendants' guilt or who are connected to the case in a way that would render them biased cannot be identified and excused during voir dire. The court is not persuaded that there exists a reasonable likelihood that the court will be unable to impanel an impartial jury despite widespread knowledge of the case.

### III. Defendants' Request for a Hearing

"In addition to their written submissions, defendants [Skilling and Causey] request a hearing on . . . [their motion to transfer venue] to present argument and live witness testimony."[26] Skilling and Causey reassert their request for a hearing in their reply memorandum.[27] Lay, too, requests a hearing on the joint motion to transfer venue.[28]

Evidentiary hearings are not granted as a matter of course, but are held only when the defendant alleges sufficient facts which, if proven, would justify relief. *United States v. Smith*, 546 F.2d 1275, 1279-1280 (5th Cir. 1977); *United States v. Poe*, 462 F.2d 195 (5th Cir. 1972), *cert. denied*, 94 S. Ct. 107 (1973). Whether a hearing must be granted is a matter within the sound discretion of the district court. *Poe*, 462 F.2d at 197. "An evidentiary hearing is not required where none of the critical facts are in dispute and the facts as alleged by the defendant if true would not justify the relief requested." *Smith*, 546 F.2d at 1279-1280.

To show that their motion to transfer venue should be granted at this stage of the proceedings (i.e., before voir dire), defendants must show that "prejudicial, inflammatory publicity so saturated the community jury pool as to render it virtually impossible to obtain an impartial jury." *Smith-Bowman*, 76 F.3d at 637 (citing *Parker*, 877 F.2d at 330). *See also Sheppard*, 86 S. Ct. at 1522 ("[W]here [defendants show that] there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should . . . transfer it to another . . . [venue] not so permeated with publicity.").

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[26] Joint Motion of Defendants Jeffrey Skilling and Richard Causey to Transfer Venue, Docket Entry No. 196, first page.

[27] Reply Memorandum of Defendants Jeffrey Skilling and Richard Causey in Support of Joint Motion to Transfer Venue, Docket Entry No. 249, p. 3 n.8.

[28] See Kenneth Lay's Declaration of Adoption of Jeffrey Skilling's Motion to Transfer Venue, Docket Entry No. 195, p. 2, and Ken Lay's Reply and Request for a Hearing on the Issue of Venue, Docket Entry No. 257.

Skilling and Causey have alleged with specificity the facts from which they argue that prejudicial, inflammatory publicity has so saturated the community that it will be impossible to impanel an impartial jury in Houston, and have supported their allegations with affidavits and other documentary evidence. Although Lay has neither alleged specific facts nor submitted documentary evidence in support of his motion to transfer, he has joined and adopted the motion and supporting evidence submitted by Skilling and Causey. For the reasons explained above, the court is not persuaded either that the facts alleged by the defendants are sufficiently prejudicial to raise a presumption that it will be impossible to impanel an impartial jury in Houston, or that there exists a reasonable likelihood that community prejudice will prevent a fair trial here. Because the court is not persuaded that defendants have alleged facts capable of raising a presumption of jury prejudice, the court concludes that a hearing is not warranted on defendants' motion to transfer venue. *See Smith*, 546 F.2d at 1279-1280 ("An evidentiary hearing is not required where none of the critical facts are in dispute and the facts as alleged by the defendant[s] if true would not justify the relief requested.").

## IV. Conclusions and Order

For the reasons explained above, the court concludes that defendants have failed to allege facts capable of establishing either that the defendants' assertions of pretrial publicity and/or community prejudice raise a presumption of inherent jury prejudice. Although news coverage about Enron's collapse, this case, and these defendants has been extensive, the court is not persuaded that it has been so inflammatory or pervasive as to create a presumption that there exists a reasonable likelihood that pretrial publicity will prevent a fair trial. Accordingly, defendants' request for a hearing on their joint motion to transfer venue is **DENIED**, and the Joint Motion of Defendants Jeffery K. Skilling and Richard A. Causey to Transfer Venue (Docket Entry No. 196), which has been adopted by defendant Kenneth L. Lay via his Declaration of Adoption of Jeffrey Skilling's Motion to Transfer Venue (Docket Entry No. 195), is **DENIED**.

**SIGNED** at Houston, Texas, on this 19th day of January, 2005.

FOR THE COURT,

/s/ SIM LAKE
SIM LAKE
UNITED STATES DISTRICT JUDGE

# REPLY
# BRIEF

No. 08-1394

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In The
# Supreme Court of the United States

Jeffrey K. Skilling,
*Petitioner,*

v.

United States of America,
*Respondent.*

**On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

## REPLY BRIEF FOR PETITIONER

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## REPLY BRIEF FOR PETITIONER

Jeffrey Skilling was convicted by a facially biased jury under a facially incomprehensible criminal statute. His convictions cannot stand.[1]

## I. SKILLING DID NOT RECEIVE A FAIR TRIAL BEFORE IMPARTIAL JURORS

The Government begins from the premise that the jurors who tried Skilling were impartial, and argues that no contrary presumption should apply. Even if one does, the Government concludes, it is rebuttable and was rebutted here.

The Government is wrong from start to finish. Skilling's jurors were not impartial—many were demonstrably *biased*, including one who believed Skilling "knew [he was] breaking the law" (SJA106sa), and another who believed that CEOs like Skilling "stretch[] the legal limits," and that "some get caught and some don't" (JA854-55a). Those jurors could not reasonably be deemed impartial under any standard. Indeed, given the widespread community hostility toward Skilling, the court should have presumed the jurors to be prejudiced, and therefore changed venue to obtain jurors from a community that was not itself a direct victim of Enron's devastating collapse. But even if community hostility creates only a *rebuttable* presumption of prejudice, it cannot be rebutted where, as here, the voir dire only confirmed and reinforced the very prejudices a proper voir dire should avoid.

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[1] The Government's factual recitation is inaccurate and incomplete, *see* Skilling C.A. Reply 1-11, but also irrelevant for present purposes.

### A. A Presumption Of Prejudice Arises When Pervasive Community Hostility Renders Voir Dire Insufficiently Likely To Expose And Avoid Juror Bias

In rare cases, widespread community passion creates conditions that render voir dire "inadequate" to identify jurors likely to be impartial. *Patton v. Yount*, 467 U.S. 1025, 1031, 1038 & n.13 (1984); *see Murphy v. Florida*, 421 U.S. 794, 798-99 (1975); *Mu'Min v. Virginia*, 500 U.S. 415, 448-50 (1991) (Kennedy, J., dissenting); PB29 (citing cases). This is such a case, as the Fifth Circuit unanimously concluded.

1. The Government first rejects the very idea of a presumption of prejudice, contending that a defendant challenging the impartiality of his jury based on general community animus must always establish that at least one juror was actually prejudiced. GB20. This Court has consistently held to the contrary since *Rideau v. Louisiana*, 373 U.S. 723 (1963), which expressly rejected the position the Government advances here, *see id.* at 729 (Clark, J., dissenting). Without exception, the lower courts have likewise long recognized a narrow category of cases involving "presumed prejudice" (based on the rare showing of overwhelming general animus), distinct from those requiring proof of "actual prejudice" (which focus on individual jurors). *See* LaFave et al., Criminal Procedure § 23.2(a) (3rd ed. 2007); *see, e.g., U.S. v. Misla-Aldarondo*, 478 F.3d 52, 58 (1st Cir. 2007). As then-Judge Alito summarized settled law, when "community reaction to a crime" is sufficiently hostile, "a court reviewing for constitutional error will presume prejudice to the defendant without reference to an examination of the attitudes of

those who served as the defendant's jurors." *Riley v. Taylor*, 277 F.3d 261, 299 (3d Cir. 2001).

The Government's position would overrule that longstanding body of law, with no showing that it has been unworkable or hotly contested. *Pearson v. Callahan*, 129 S.Ct. 808, 816 (2009). The Government instead cites cases involving isolated trial errors allegedly affecting the jury's impartiality, which do require the defendant to prove that one or more jurors (otherwise presumed to be impartial) were actually prejudiced by the error. GB20. The whole point of the presumed prejudice rule, however, is that in cases involving widespread community and media animus, the standard devices for assembling a jury do not function reliably enough to justify the usual assumption that the jury is impartial. PB30-33; *infra* at 4-5.

2. The Government contends that the presumed prejudice caselaw means "only that the district court should conduct a more searching inquiry than usual and closely scrutinize juror claims of impartiality when pretrial publicity is particularly intense." GB28. Certainly the cases mean *at least* that much, and the district court here failed that standard by a wide margin. PB10-12; *infra* at 13-14. But the cases demand more: when the circumstances surrounding the trial give rise to a presumption that veniremembers will be prejudiced, "jurors' claims that they can be impartial should not be believed." *Patton*, 467 U.S. at 1031, so venue must be transferred.[2]

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[2] *Mu'Min*'s statement that substantial community passion may require more extensive voir dire (GB28-29) does not contradict prior precedents holding that transfer is sometimes required because Mu'Min *was not seeking transfer*, but only more

The Government's "extensive voir dire only" approach also contradicts Criminal Rule 21. That rule *requires* a court to transfer when "so great a prejudice against the defendant exists in the transferring district that the defendant cannot obtain a fair and impartial trial there." Under the Government's theory that effective voir dire can *always* reliably ferret out prejudice, Rule 21 serves no purpose.[3]

Nor can the Government's theory be reconciled with the principles underlying the presumption. First, the Government cannot explain how heightened voir dire can reliably expose concealed or unrecognized prejudices that are especially problematic among jurors drawn from a hostile community. PB31-33 nn.7-9. The Government simply recites the general rule that "jurors follow their instructions" (GB30-31), but that assumption necessarily applies only to jurors who have already been deemed trustworthy enough to serve on the jury, and who have sworn to follow their instructions. No case has applied that assumption to unsworn veniremembers where broad community hostility gives substantial reason to doubt their assurances of fairness. Under those conditions, the opposite presumption applies:

> In a community where most veniremen will admit to a disqualifying prejudice, the reliability of the others' protestations may be drawn into question; for it is then more probable that they are part of a community deeply hostile to the accused, and more likely that they may

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extensive voir dire. 500 U.S. at 417.

[3] Contrary to the Government's suggestion (GB19 n.3), the question whether transfer was required under Rule 21 is preserved for this Court's consideration. Pet. App. 55a-56a n.29.

unwittingly have been influenced by it.

*Murphy*, 421 U.S. at 803; *see Irvin v. Dowd*, 366 U.S. 717, 728 (1961); *Misla-Aldorando*, 478 F.3d at 59.

Second, the Government cannot explain how voir dire can prevent jurors—even those who seem impartial at the outset—from succumbing to severe pressure during trial from community peers to convict the defendant. PB31-32.

3. This very case refutes the suggestion that reaffirming the presumption of prejudice will make trials in high-profile cases impossible. The record below established that communities such as Denver and Phoenix had nowhere near the familiarity with Enron or Skilling that the Houston community did. Pet. App. 141a-146a.[1]

Additionally, one of the most nationally prominent criminal cases ever tried—the Oklahoma City bombing case—was transferred to Denver and successfully tried, albeit after an 18-day voir dire following two separate juror questionnaires. Removing that trial "from the eye of the emotional storm in Oklahoma to the calmer metropolitan climate of Denver" is exactly what allowed a careful voir dire to identify impartial jurors despite intense nationwide publicity. *U.S. v. McVeigh*, 153 F.3d 1166, 1182 (10th Cir. 1998). As *McVeigh* demonstrates, taking seriously the presumption of prejudice in the rare situations it arises does not preclude trials in major cases—rather, it *facilitates* fair trials in such cases, and ensures legitimacy in their results.

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[1] The Government cites its own survey ostensibly indicating that Phoenix residents were more likely to consider Skilling guilty than Houston residents. GB7. But that analysis (JA 662a-690a) *excluded respondents who were unfamiliar with the Enron prosecutions.* Phoenix residents were more likely (by a factor of three) than Houston residents to be unaware of Enron prosecutions. When all respondents were included, Phoenix proved a far less biased venue. JA663a-665a, 668a-670a.

### B. Pervasive Hostility And Adverse Publicity In Houston Warranted A Presumption That Houston Jurors Could Not Judge Skilling Impartially

The Fifth Circuit correctly held that this case was one of the rare few that raised a presumption of prejudice among local jurors.

1. Enron's "financial meltdown ... left an entire town angry, cuckolded and saddened," the *Los Angeles Times* reported in 2002. JA1195a. "[P]sychologically, symbolically, Enron had no equal. Its name graced the polished trestles of the new baseball stadium. Cash from the company laced the fine and performing arts, and kept charities afloat. ... Enron told this infant metropolis it was the center of a new economy, and eagerly Houston believed." JA1196a. When the company suddenly collapsed, it was considered "a horrible betrayal of the city." Houstonians "who had no connection to the company" said they were "ashamed of its behavior." JA1195a. Up to the time of trial, another news account explained, "the shame and humiliation surrounding the implosion of the city's most powerful, glamorous business remained an open wound." JA1976a. The *Chronicle* reported that Houston remained "a city full of people whose lives were damaged by the scandal." R:39904.

The Government itself fully understood that Enron's collapse victimized the city as a whole, urging the trial court to recognize at sentencing that "Houston as a community was hit particularly hard by the collapse." R:42161. The Fifth Circuit likewise emphasized that "countless people in the Houston area" were affected. Pet. App. 58a. Perhaps most tellingly, all 150-plus attorneys in the local U.S. Attorney's office recused themselves from Enron cases—confirmation of the breadth of Enron's connections and the depth of the passion aroused by its collapse.

Houstonians directed their shame and anger squarely at Skilling. He was lambasted almost daily in the *Chronicle* in vitriolic terms, described as equivalent to, e.g., a child molester, rapist, embezzler, and terrorist. PB5-6. The Government's *own poll* found that almost 60% of Houstonians believed they needed no further information to conclude that Skilling was guilty. R:1055, 1107-12. Within the venire itself, even the Government agreed that some 40% of the 283 returned questionnaires (the actual percentage was much higher) manifested sufficiently intense bias toward Skilling to warrant immediate dismissal, with no prospect of so-called "rehabilitation" at courtroom voir dire. PB9.

Skilling's trial was described by one news account as "one of those galvanizing civic events, like the Rockets winning the championship," and his conviction was considered no less than an "exoneration of the city." JA1984a. A "collective giddiness swept over Houston" on announcement of the verdict—finally, the city "had permission to move on." JA1976a. In the *Chronicle's* words, Skilling's conviction brought "needed closure" to Houston "after the civic trauma of the Enron debacle." JA1955a. "[W]hat the guilty verdicts have provided," declared Houston's paper of record, "is an exorcism." *Id.*

2. The widespread economic impact and sense of civic shame distinguishes Skilling's case from other high-profile cases. Pet. App. 58a; Media Br. 7-8. Other cases typically involve isolated crimes against individual victims, and are known to the broader public only because of celebrity involvement or other sensational details. Here, the community itself was considered a victim, and it blamed Skilling.

The Government thus errs in seeking "deference to the trial court about the effect of publicity on the jury pool." GB31. The trial court's finding of no presumption fails under any standard,[7] not only because its assessment of pretrial publicity as neutral was manifestly incorrect, but also because its ruling incorrectly addressed *only* publicity. GB9a-19a. As the Fifth Circuit emphasized (Pet. App. 58a), the trial court's ruling ignored the more serious problem: no Houstonian needed to read the newspapers to understand the cataclysmic effects of Enron's collapse on the city as a whole, and the intensity of Houston's animosity toward Skilling. The undisputed fact that many potential jurors who professed not to follow the news nevertheless expressed prejudicial views about Skilling (Skilling C.A. Reply 110-15 & App. 3), establishes that animus pervaded Houston through sources other than those the district court considered.

The unusual and highly toxic combination of communitywide victimization and focused blame on the defendant also distinguishes Skilling's case from cases in which this Court did not find a presumption of prejudice warranted. *Patton*, for instance, involved a single murder, and by the time of the defendant's second trial four years after the event, "prejudicial publicity was greatly diminished and community sentiment had softened." 467 U.S. at 1032. Here, "the publicity remained intense throughout" (Pet. App. 59a), and the passage of time only "allow[ed] the hurt and anger and resentment to churn" (R:39904).

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[7] An appellate court on direct review has "the duty to make an independent evaluation of the circumstances." *Sheppard v. Maxwell*, 384 U.S. 333, 362 (1966); *see* LaFave et al., *supra*, § 23.2(a) (it is a "basically legal question" whether presumption arises (citing *Mu'Min* and *Patton*)).

*Mu'Min* similarly involved an individual crime in a large metropolitan region, and the allegation of prejudice was based on pretrial publicity reflected in just 17 newspaper articles, mostly appearing in a low-circulation community newspaper. 500 U.S. at 418 & n.1. And unlike here, none of the seated jurors had formed opinions about the defendant's guilt—the one juror who equivocated was removed sua sponte by the judge. *Id.* at 420-21.

3. The Government offers three reasons the Fifth Circuit erred in concluding that the district court should have applied a presumption of prejudice. None has merit.

a. The Government contends that, at least in large metropolitan communities, voir dire can *always* be structured to obtain an impartial jury, no matter what crime is involved. GB32. Not so. The size of the community matters, but large communities are not immune from pervasive prejudice requiring transfer, as exemplified by *McVeigh*, Andrew Fastow's wife's case (transferred to Brownsville), and the D.C. sniper cases (transferred to southeastern Virginia).

Notably, in contending that it was possible to obtain a reliably impartial jury in Houston because of its size, the Government actually concedes Enron's collapse *did* create substantial "non-media prejudice" throughout the community. GB32-33. The Government contends, however, that the jury questionnaires adequately addressed that prejudice. *Id.* But the Government makes no effort to show how questionnaires could adequately expose concealed or unrecognized prejudices. And in fact, the questionnaires here were *not* used to expose and exclude biased jurors. *See infra* at 13-14. Even worse, the questionnaires affirmatively *exacerbated* the risk of prejudice because they included Skilling's codefendant Rick Causey, who pleaded guilty on the eve of trial. Although "prejudice was inherent in [Causey's] well-publicized" plea (Pet. App. 57a), the court refused to remove the plea's taint by distributing new questionnaires to a new venire.

b. The Government next argues that Skilling could be tried fairly in Houston because other courts held that Enron-related criminal cases could be tried fairly there. But one prominent case before Skilling's—Lea Fastow's—was transferred to another venue. GB8 n.1. And jurors in other Enron cases were excluded for cause for expressing views far less prejudicial than those expressed by the Skilling jurors. PB36. Most important, other executives confronted nothing like the venomous conditions faced by Skilling, who was uniquely demonized as the criminal mastermind who betrayed the city. PB5-7; *supra* at 7-8. According to the *Chronicle*, mixed results in Enron trials were but a "distraction" before "the Big One"—"[f]rom the beginning," the Government's "one true measure of success" was "Lay and

Skilling in a cold steel cage. ... Let the small fry fish swim free if need be. We've got bigger fish in need of frying." JA1157a-60a.

c. The Government finally contends that Skilling's acquittal on nine of ten insider trading counts proves the jury's fairness. GB34. But the jury convicted Skilling on *nineteen other counts*, and the Government essentially abandoned the nine insider trading counts in its closing. R:37010. There is no logical or empirical reason to expect that biased jurors would necessarily run the table, especially where—as here—prosecution overcharging gives them ample opportunity to deliver the guilty verdicts they want to deliver.

### C. The Government Did Not Rebut The Presumption That Skilling's Jurors Were Prejudiced

The Government finally argues that, even if there was a rebuttable presumption of prejudice, the Government rebutted it here. That argument cannot be squared with this record.

1. At the outset, the Government cannot answer the straightforward point that if a rebuttable presumption of prejudice was triggered, the trial court's findings concerning individual juror impartiality were legally meaningless, because it did not apply the proper burden in making those findings. PB37. Indeed, the failure to apply any presumption renders the entire process largely irrelevant. The central error here was not the impaneling of particular jurors who showed actual prejudice, but the failure to *presume* that *all* of the potential jurors were prejudiced, and thus to take adequate steps to avoid or mitigate that risk. If the court had presumed each juror to be

prejudiced against Skilling until proven otherwise,[6] the court could not reasonably have:

- limited courtroom voir dire to just five hours and only 46 jurors (out of 1.5 million Houston-area residents);
- cross-examined overtly biased jurors until extracting a rote promise of fairness; and
- accepted at face value promises of fairness from jurors who openly expressed prejudicial opinions.

The court instead conducted voir dire largely as it would in any other case, and thus failed to accord Skilling the basic protections to which he was entitled given the community and media conditions.

2. To support its assertion that Skilling's jurors "neither knew nor cared much about Enron's collapse," the Government focuses solely on their attention to news media, noting that "nine jurors did not read the *Houston Chronicle*, four rarely or never watched television, and ten said they did not follow the news about Enron." GB21. By the Government's own account, then, three jurors *did* read the *Chronicle*, eight jurors *did* watch television, and two jurors *did* follow Enron news. The Government does not even attempt to argue that these jurors were uninfluenced by the spectacularly inflammatory coverage they saw. Even more important, the Government's analysis flatly ignores all the non-media bias that

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[6] Contrary to the Government's submission (GB35), rebuttal (if allowed) must be proved beyond a reasonable doubt because constitutional error occurs when the court fails to transfer venue under conditions that render all potential jurors presumptively prejudiced. PB31.

demonstrably influenced the jurors. *Supra* at 6-8.

3. In attempting to prove the actual impartiality of the entire jury, the Government addresses only *two* of the twelve—Jurors 11 and 90. GB22-23.[7] The Government ignores:

- Juror 63, who answered "yes" to the question whether she had an opinion as to Skilling's guilt and stated that the defendants "probably knew they were breaking the law." SA106sa.
- Juror 10, who answered "yes" to the same question, and believed that Enron's collapse was "due to greed and mismanagement." SA12sa, 16sa.
- Juror 20, who said she was "angry" about Enron's collapse and that she, too, had been "forced to forfeit [her] own 401(k) funds to survive layoffs." SA60sa.
- Juror 87 (the forewoman), who believed Enron managers were "greedy" and that her choice at trial was whether the defendants were "guilty of something illegal" or "guilty of being poor managers"—a predisposition contrary to Skilling's defense that Enron collapsed because of a sudden (but avoidable) liquidity crisis that occurred months after Skilling left. JA974a-76a.

The Government has no theory for how the presumption of prejudice was rebutted as to those jurors.

Of particular note is Juror 63, whose courtroom voir dire exemplifies the flawed process below.

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[7] The Government also defends the impartiality of Juror 113 (GB22-23)—an alternate

When asked whether she had changed her belief (acknowledged on her questionnaire) that Skilling knew he was breaking the law, she said only, "I don't know," while conceding that her "knowledge isn't any different than it was then." JA936a-37a. Although she indicated no reason for any changed opinion, the court nonetheless pressed as to whether she could presume the defendants are innocent. She responded "absolutely," and that she did not "know what [she] was thinking at the time" of the questionnaire. That was enough for the court to seat her on the jury.

Such rote assurances of fairness cannot be accepted—much less affirmatively elicited by the court—when a presumption of prejudice applies, precisely because juror promises of impartiality in that situation are subject to grave doubt. *Supra* at 2, 4-5. The proper course, if not to transfer venue, was to seek other jurors who, at a minimum, did not openly express such bias.

While ignoring Juror 63 and other overtly biased jurors, the Government does try to defend the seating of Juror 11—whose bias was patently obvious to *USAToday*—but the defense is unavailing. PB15-16. It is wholly irrelevant that Skilling did not exercise a peremptory strike (GB23) on him or any other juror. *See U.S. v. Martinez-Salazar*, 528 U.S. 304, 314-15, 316 (2000).[8] Nor is it correct that a few statements arguably indicating fairness (GB 23-24) cancel out his colorful litany of prejudicial comments (PB15-16).

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[8] Given the trial court's erroneous denial of cause challenges to multiple *other* jurors, the defendants were forced to exhaust peremptories on jurors who were even more blatantly biased. *See, e.g.*, JA980a-983a, 995a-1002a.

Although "ambiguous and at times contradictory" voir dire responses may not establish prejudice *in the normal case*, GB21 (quotation omitted), that rule cannot obtain *in the unusual case* where pervasive hostility in the jurors' community raises presumptive doubts about their impartiality. In that situation, it is the prejudicial statements—not promises of fairness—that must be taken at face value.

Finally, there is no merit to the Government's suggestion that Skilling's "own actions" at trial demonstrate the lack of actual bias among seated jurors. GB21. When the court denied Skilling's motion to transfer because of the presumed bias of the entire juror pool, Skilling was left with the impossible task of attempting to identify the least biased of the presumptively biased jurors. Constrained in that way, Skilling not only made a contemporaneous cause challenge to Juror 11, as the Government acknowledges (GB23), he also later objected specifically to the seating of six other jurors (Jurors 20, 38, 63, 67, 78, and 84), as the Government acknowledged at the certiorari stage (BIO6).[9] He likewise objected to court's refusal to permit an extensive, individualized, non-public voir dire process that would have allowed the defense to better identify the effects of prejudicial community and media influences. PB10, SJA4sa. And while defense counsel did not question all jurors extensively, that fact hardly shows that counsel were "satisfied" that the jurors were unbiased. GB21. To the contrary, when prejudice was self-evident on the face of the questionnaires, counsel were "satisfied" that *prejudice had already been established*, and they had no burden to inquire further, especially if a presumption applied. In short, Skilling's actions did nothing to indicate his agreement that voir dire produced a jury that was actually impartial.

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[9] The Government correctly declines to endorse the Fifth Circuit's erroneous conclusion (Pet. App. 64a) that Skilling "waived" any argument concerning other jurors' prejudice by not making a contemporaneous cause challenge to them. Skilling's central argument was that *all* jurors were presumptively prejudiced, an argument he preserved by repeatedly moving to change venue.

* * * *

Due process does not and could not require perfection in the criminal trial process. But because the process of identifying genuinely impartial jurors is imperfect in the best of conditions—given the need to rely to some extent on jurors' own claims about their opinions—due process requires courts at least to avoid *easily avoidable* conditions that increase the probability that jurors will be prejudiced.

At every juncture, however, the trial court chose (at the urging of the special Enron Task Force and over Skilling's strong objection) the procedural course most likely to produce a biased jury. And for no good reason. There was no legitimate reason to refuse transfer to some other community that did not suffer the economic impact and sense of shame and betrayal from Enron's collapse. There was no legitimate reason to forge ahead with the original 283 jurors after they were poisoned by Causey's last-minute guilty plea. There was no legitimate reason to limit courtroom voir dire to just five hours, and a minuscule fraction of the 4.5 million Houston-area residents. And there was no legitimate reason to accept jurors who openly expressed the very prejudice voir dire is supposed to avoid, when so many other potential jurors might have been chosen.

## II. SKILLING'S CONVICTIONS BASED ON HONEST-SERVICES FRAUD CANNOT STAND

The Government's brief virtually concedes that Skilling's honest-services-based convictions must be reversed. To save § 1346 from invalidation, the Government repeatedly insists that two categories of "paradigmatic" pre-*McNally* cases limit the statute's reach and provide notice to the public and constraints on prosecutors.

But then the Government gives the game away to Skilling, twice asserting that Skilling's conduct does *not* fall within the paradigmatic honest-services caselaw it cites. GB17 (Skilling's conduct was not "classic form" of nondisclosure honest-services fraud); GB19 (Skilling's case does not involve "prototypical" conduct "characteristic of nondisclosure honest-services cases"). Nothing else is required to conclude that Skilling's honest-services convictions cannot survive the Government's constitutional defense of the statute. The Government will not quite say so, but its one-paragraph defense of Skilling's convictions (GB50) speaks volumes. It is almost beside the point that the Government's constitutional defense fails on its own terms, for even if the statute can remain standing, Skilling's convictions cannot.

### A. Section 1346 Is Unconstitutionally Vague

Section 1346 has no discernible meaning on its face to the public it governs or the prosecutors who wield it. The Government nevertheless contends that the statute can be judicially limited to "two categories of conduct" on which there was "a solid consensus" among appellate decisions prior to

*McNally v. U.S.*, 482 U.S. 350 (1987): (1) "acceptance of bribes or kickbacks," and (2) self-dealing, which it carefully defines as "the taking of official action by the employee that furthers his own undisclosed financial interest while purporting to act in the interests of [his employer]." GB12-11.[10] The Government's effort to salvage § 1346 fails.

1. The Government's theory by its terms would not read § 1346 to criminalize all acts constituting fraudulent deprivation of "*the* intangible right of honest services" that predated *McNally*. The Government instead argues that the two categories it defines simply reflect paradigmatic *examples* of a crime with a broader but inadequately defined reach. The Government thus is not asking for a judicial *construction* of the crime described in the statute, but a judicial *limitation* on it. In that sense, the Government treats § 1346 like a crime of "doing wrong," which under the Government's approach could be permissibly applied to paradigmatic acts, like murder, that everyone can agree clearly constitute wrongdoing. But such statutes are wholly unenforceable—not because there are no acts that clearly fall within their terms, but because their sweep is so broad and standardless that they give

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[10] The Government takes an irrelevant detour (GB39-42) into what it labels the "three elements" of honest-services fraud—breach of a loyalty duty, deception, and materiality. Even the Government does not contend that *every* case involving the three elements constitutes honest-services fraud; the Government instead insists that only two specific categories of conduct are encompassed by § 1346, even though an infinite amount of basic employee misconduct would satisfy all three elements. Nor does the Government cite any case pre- or post-*McNally* holding that the three elements are necessary or sufficient to prove honest-services fraud.

prosecutors "too much discretion in *every* case." *City of Chicago v. Morales*, 527 U.S. 41, 71 (1999) (Breyer, J., concurring).

The Government's approach to § 1346 differs from the approach applied in *U.S. v. Kozminski*, 487 U.S. 931 (1988), where the Court resolved vagueness concerns relating to 18 U.S.C. § 241 by "construing" it "to prohibit only intentional interference with rights made specific either by the express terms of the Federal Constitution or laws or by decisions interpreting them." *Id.* at 941. The Court's construction of the statute was not an artificial limitation divorced from its text or history, but instead rested specifically on the term "conspire" as it had been previously construed. *U.S. v. Guest*, 383 U.S. 745, 753-54 (1966); *cf. Screws v. U.S.*, 325 U.S. 91, 101 (1945). By contrast, the Government does not argue that either Congress, or any court prior to *McNally*, understood that "honest-services fraud" meant *only* bribes/kickbacks and official action in furtherance of an undisclosed personal financial conflict. The Government simply describes them as paradigmatic situations in which convictions were upheld, and it excludes other situations merely to save the statute from itself. But if the broad and vague crime of honest-services fraud is to be confined to its paradigmatic examples, writing a statute to achieve that objective is a task for Congress, not this Court.

2. The Government's theory that § 1346 encompasses only two paradigmatic categories is also belied by the statute's prosecution history. PB43-44. The Government does not deny the long record of opportunistic prosecution, but instead attempts to justify it as routine Department of Justice practice. GB19. That is no defense, and in any event, it is not

routine for the Department to take more than *two decades* to decipher a significant criminal statute's core elements. And if, as the Government suggests, experienced prosecutors could not accurately ascertain the meaning of pre-*McNally* caselaw without guidance from the Solicitor General (GB19), there is no reason to think anyone else could either.

Moreover, the Government's position on the meaning of the statute has changed dramatically since the Solicitor General began to articulate it: in less than one year, the Solicitor General has gone from asserting that conduct intended to advance the interests of third parties is "clearly proscribed" by § 1346 to claiming it is clearly *not* proscribed. *Compare Sorich* BIO 17 (conduct "clearly proscribed") *with Black* Oral Arg. Tr. 16 (§ 1346 does *not* reach undisclosed financial interest of fiduciary's "adult son" because "core of the pre-*McNally* cases involve personal conflicting financial interests") *and* GB44 (§ 1346 only reaches defendant's "own financial interests" in self-dealing cases).

3. Prosecutors can shift so easily because pre-*McNally* caselaw provides no clear meaning to constrain them. The Government fails to show otherwise. For instance, the Government asserts that the cases clearly established that no state-law violation is required, but they just as clearly did *not* establish what source of law *does* apply. PB40. The Government contends that only one "outlier" case, *U.S. v. Lemire*, 720 F.2d 1327 (D.C. Cir. 1983), identified contemplated economic harm as an element of honest services fraud (GB47), but the Government misreads the cases (PB40-41), and itself has previously described *Lemire* as a "thoughtful opinion" reflecting a proper understanding of the honest-services crime.

U.S. Br. in *Carpenter v. U.S.*, No. 86-422, at 32. The Government argues that the cases recognized potential differences between private-sector and public-sector cases (GB17), but that merely restates the problem: the cases did not clearly establish *what those differences are*. PB11. Finally, the Government's argument that there was no conflict over an "official action" requirement depends entirely on its assertion that *U.S. v. Bush*, 522 F.2d 641 (7th Cir. 1975), involved official action (GB48), but the Government itself previously described *Bush* as a case in which the defendant did *not* "take any action in his public capacity." *U.S. v. Bloom*, 149 F.3d 649, 655 (7th Cir. 1998).

1. Finally, the pre-*McNally* caselaw does not even support the Government's theory as to the irreducible minimum core of cases universally accepted as honest-services fraud. It is true that every case involving a bribe or kickback was recognized as honest-services fraud, but that is manifestly not true for "self dealing" cases, which raise a host of unanswered definitional questions. *See infra* Part II.B.1.&2. Adopting the Government's two categories thus would do nothing to cure the statute's vagueness problems.

### B. If Not Invalidated, Section 1346 Should Be Limited To Bribes And Kickbacks

If the Court decided to impose some limitation on § 1346 to "avoid the constitutional question[s]" that would be raised given the statute's inherent vagueness, *Jones v. U.S.*, 529 U.S. 848, 858 (2000), it should confine the statute solely to bribes and kickbacks. Especially given the Rule of Lenity, the Court should reject the self-dealing category proposed by the Government.

1. A bribe/kickback category would not itself be vague, but a self-dealing category would be. A statute limited to bribes/kickbacks might be understood as borrowing the elements of federal bribery statutes and applying them to both public and private actors. *See* 18 U.S.C. § 210. That construction would resolve the confusion in the circuits relating to the source of the elements of the honest-services duty (federal bribery statutes), the need for a showing of contemplated economic harm (no), the possible difference between public and private sector standards (no), and the need for official action (yes).

Self-dealing, however, would be irredeemably vague. The Court would have to resolve multiple core questions without any statutory guidance. *See U.S. v. Kincaid-Chauncey*, 556 F.3d 923, 948-49 (9th Cir. 2009) (Berzon, J., concurring). These include:

- when officials have conflicting interests—*i.e.*, only when they personally stand to benefit?, when a family member or other individual stands to gain?, and if the latter, who in particular (spouse, minor child, adult child, parent, sibling, close friend)?
- when it is permissible for an official to act on a conflict—*i.e.*, is consent required, or is disclosure sufficient?, and if the latter, to whom must disclosure be made, in what form, and when?
- whether there is a requirement of contemplated economic harm, whether the standards of public and private officials should be the same, and whether official action is required.

Finally, the Court would have to invent a new materiality standard for public-sector cases. Information normally is material if it has "a natural tendency to influence, or is capable of influencing, the decision of the decisionmaking body to which it was addressed." *U.S. v. Gaudin*, 515 U.S. 522 (1995). That standard cannot be applied coherently in the public sector because the victim is the general public, which has no authority to make the relevant decision. The Government suggests that deception in legislative-action cases "will be material it if makes a difference in the way the public or other officials assess whether the office-holder has placed his self-interest above that of the public." GB41-42. But where this standard comes from, how "the public's" assessment of the legislator's motives is determined, and what standard would apply to other public officials, the Government does not say.

2. In addition, unlike bribery and kickbacks, the separate self-dealing category defined by the Government was not a "paradigmatic" example of an honest-services violation prior to *McNally*. Successful prosecutions involving non-bribery/kickback self-dealing were rare, and successful prosecutions in which the court embraced the Government's theory of self-dealing were rarer still.[11] Thus, if § 1346 cov-

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[11] Of the 13 "self dealing" cases identified by the Government (GB44 n.5), three actually involved bribes or kickbacks. *U.S. v. Holzer*, 816 F.2d 304 (7th Cir. 1987); *U.S. v. Dick*, 744 F.2d 546 (7th Cir. 1984); *U.S. v. Brown*, 540 F.2d 364 (8th Cir. 1976). Three others *reversed* convictions, either rejecting or failing to endorse the Government's self-dealing theory. *U.S. v. Kwiat*, 817 F.2d 440 (7th Cir. 1987); *U.S. v. Ballard*, 663 F.2d 534 (5th Cir. 1981); *Epstein v. U.S.*, 174 F.2d 754 (6th Cir. 1949). While the remaining seven affirmed convictions, most did not reflect—much less give notice of—the Government's

ers only "paradigmatic" cases, self-dealing would not qualify.

3. Interpreting § 1346 to cover bribery and kickback cases also would fill a significant gap in the mail- and wire-fraud statutes, because the receipt of bribes and kickbacks from third parties often does not result in money or property loss to the victim. By contrast, in pre-*McNally* cases, self-dealing invariably collapsed into money or property fraud. PB51-52.

The Government asserts that self-dealing does not necessarily result in money or property loss. GB45. But in *every* successful pre-*McNally* non-bribery/kickback self-dealing prosecution cited by the Government, the victim *did* suffer a money or property loss. GB44 n.5 (citing cases). When the Government failed to show a money or property loss, the conviction was reversed. *Id.*

Neither case offered by the Government as a counterexamples shows otherwise. In *U.S. v. Keane*, 522 F.2d 534, 551 (7th Cir. 1975), the city suffered a money or property loss, because Keane's properties were significantly more costly than other similar properties. And *U.S. v. O'Malley*, 707 F.2d 1240, 1243 (11th Cir. 1983) was a bribery case.

The Government also erroneously relies on Congress's intent to overrule *McNally* as support for its self-dealing category. GB45. *McNally* involved quid pro quo "kickbacks," 483 U.S. at 356, as the Government has acknowledged. *Weyhrauch* Oral Arg. Tr. 50. The Court described the scheme as self-dealing only in the sense that *any* kickback scheme

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current self-dealing theory

constitutes a form of self-dealing. *Weyhrauch* GB25 n.7.

4. The Government complains that without a prohibition against self-dealing, a municipal official could vote to rezone property in which he has an undisclosed interest without fear of federal honest-services prosecution. GB45. But under the Government's theory, that same official would be insulated from prosecution under § 1346 as long as the undisclosed interest were held by his 21-year old son, or his mother, brother, or girlfriend. Section 1346 simply does not capture every unethical or blameworthy act. When it does not, state law and the watchful eye of the press and public remain as deterrents.

The Government also asserts that without a self-dealing prohibition, a state elected official could escape federal prosecution for voting against a tax increase that benefits someone from whom he is seeking employment. GB45. But the Government *can* prosecute that case, so long as it can establish that the vote was a quid pro quo for the employment opportunity. Otherwise, the conduct is *not* "core honest services fraud."

5. The Government's application of its proposed self-dealing category to Skilling's case demonstrates the continued manipulability of the statute under the Government's approach. In *Black* and *Weyhrauch*, the Government expressed the view that § 1346 prohibits only bribes/kickbacks and self-dealing, and that the latter category is implicated only when conflicting financial interests are "undisclosed." *Black* GB36; *Weyhrauch* GB45. That statement suggested that the Government would

concede that Skilling did not commit honest-services fraud, because Skilling's only alleged personal financial interests arose from Enron's linking of his compensation to Enron's stock value, an interest that was fully disclosed.

But the Government nevertheless argues that Skilling committed honest-services fraud. To bring Skilling's case within the statute's compass, the Government creates a third category of honest-services fraud, one that involves *disclosed* personal financial interests. The Government's cursory explanation of Skilling's honest-services liability (GB50) is hardly clear, but it appears to contend that while Skilling's "personal financial interests" were disclosed and generally aligned with Enron's interests, he put those interests in conflict when he took actions pursuant to his own disclosed compensation interest that were allegedly contrary to Enron's. Accordingly, in this new category, what the defendant apparently fails to disclose is his scheme to put his own compensation interests ahead of his employer's distinct interests. Not only is that standard itself vague on its own terms, but the Government's repeated acknowledgement that Skilling's case has no precedent in pre-*McNally* caselaw (GB17, 49) confirms that this special crime is its own new category, created for the first time in the Government's brief in this Court.

It is time for prosecutors to stop making up crimes under this statute. If § 1346 is not invalidated altogether, it should be limited to the single category of conduct universally recognized in the caselaw and hence largely immune from manipulation—quid pro quo bribes and kickbacks.

### C. Under The Government's Theory Of § 1346, Skilling's Convictions Must Be Reversed

Even if the Court accepts the Government's proposed self-dealing category, Skilling's convictions still must be reversed.

1. At the very least, § 1346 requires the jury to find that the defendant acted for private gain distinct from normal compensation, especially given the Rule of Lenity. The Government asserts that there is no private-gain requirement. GB50-51. But it cites no pre-*McNally* case upholding a conviction for honest-services fraud that lacked private gain. Private gain was even more paradigmatic in pre-*McNally* caselaw than bribes and kickbacks *every* case involved the pursuit of private gain. PB53.

The Government also argues that Skilling sought private gain in the form of his disclosed stock-sale compensation incentives. GB52. But no pre-*McNally* case suggested that an employee who pursues ordinary compensation is acting for private gain, and the requirement makes no sense in the private sector. PB55-56; *see U.S. v. Thompson*, 484 F.3d 877, 884 (7th Cir. 2007).

2. The self-dealing category described by the Government rejects the private gain requirement for undisclosed financial conflicts—the "critical element" is that the defendant *had* an "undisclosed personal conflicting financial interest" in the transaction, not whether he acted in pursuit of that interest. GB50. Even leaving aside the latter omission, the Government's self-dealing category by definition excludes Skilling's convictions: his financial interest in Enron's increased share value was disclosed. Nor was

the jury instructed to find the "critical element" of an "undisclosed personal conflicting financial interest." That should end the matter.

As discussed, however, the Government tries to salvage Skilling's convictions by implicitly transforming its self-dealing category into yet another category involving acts taken pursuant to *disclosed* financial interests. GB50. That third category has no place in the statute. The Government itself concedes that acting pursuant to one's own disclosed compensation interest is *not* a paradigmatic example of honest-services fraud (GB17, 49), which is enough to exclude it from § 1346 on the Government's own theory. To be clear: there is no example or even hint of it in pre-*McNally* or post-§ 1346 caselaw. The crime is not "paradigmatic"—it is nonexistent.

In any event, the adoption of the Government's special new category could not salvage Skilling's convictions: the jury was never instructed to find that he acted pursuant to a disclosed financial interest at Enron's expense. Reversal is required.[12]

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[12] The Government does not argue that the failure to instruct on its new theory was harmless beyond a reasonable doubt. Nor could it. Prosecutors insisted to jurors that the case was *not* about "greed" on Skilling's part. PB3. The Government now suggests that the jury nevertheless might have found that Skilling intended to inflate Enron's stock value so he could sell his shares at supra-market prices, but the jury was never asked to make such a finding, and the trial record did not compel such a finding. PB2-3.

### D. The Government Fails To Show That The Error Of Skilling's Honest-Services Convictions Was Harmless Beyond A Reasonable Doubt

The Government contends that even if the jury was improperly allowed to consider the honest-services object of the conspiracy count, that error is harmless beyond any reasonable doubt. According to the Government, the honest-services object it fought so hard to preserve at trial was actually meaningless surplusage, because the trial record shows that jurors could have found Skilling of the honest-services fraud object only if they also found him guilty of the securities-fraud object. GB52. The district court and Judge Higginbotham correctly rejected this argument. Pet. 11.

The Government's argument fails at the threshold because its claims about the trial record are wholly unsupported by any citations to the trial record. A party's "failure to cite or refute the record not only waives [the] complaint on appeal but demonstrates the lack of evidence in the [party's] favor." *Messer v. Meno*, 130 F.3d 130, 135 (5th Cir. 1997).

And the record does confirm that the presence of the flawed honest-services object was not harmless. Skilling C.A. Reply 29-37; Skilling Rule 28(j) Ltr., Mar. 25, 2008. The Government at trial asserted an honest-services fraud theory *wholly distinct from securities fraud*—a theory (which consumed weeks of the trial) that Skilling failed to do his job "appropriately" by exposing Enron to too much risk and making other decisions that, while fully disclosed and thus by definition not securities fraud, nevertheless could make the company look bad (so-called "Wall

Street Journal risk"). Skilling C.A. Reply 33-37; PB2-3.

Although the Government's factual recitation is gerrymandered to ignore this distinct honest-services theory, the Government's harmless-error argument concedes that the securities-fraud evidence only *partly* overlapped with the honest-services evidence. GB53. The Government thus necessarily cannot show that the conspiracy conviction rested *only* on the securities-fraud theory, rather than the distinct, legally-flawed honest-services theory. In fact, given the glaring weaknesses of the Government's substantive securities-fraud case against Skilling, *see* Skilling C.A. Reply 1-11; 33-37, it is very possible—indeed likely—that jurors convicted Skilling for conspiracy based on the honest-services object, and then relied on the *Pinkerton* instruction the Government obtained to find him vicariously liable for securities fraud committed by *others*, such as Fastow and Causey, *id.* at 39-45. Because the Government cannot refute that possibility, it cannot show that including the honest-services object was harmless.

## CONCLUSION

The decision below should be reversed.

Respectfully submitted,

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February 22, 2010

# AMICUS
# CURIAE
# BRIEF

No. 08-1394

IN THE
# Supreme Court of the United States

JEFFREY K. SKILLING,
*Petitioner*,

v.

UNITED STATES OF AMERICA,
*Respondent*.

**On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

# BRIEF OF ABC, INC., ADVANCE PUBLICATIONS, INC., THE ASSOCIATED PRESS, BLOOMBERG L.P., CABLE NEWS NETWORK LP, LLLP, CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION, DOW JONES & COMPANY, INC., FIRST AMENDMENT COALITION, GANNETT CO., INC., THE HEARST CORPORATION, THE MCCLATCHY CO., MEDIA LAW RESOURCE CENTER, INC., MEDIANEWS GROUP, INC., THE NEW YORK TIMES CO., REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, THE TRIBUNE COMPANY, AND THE WASHINGTON POST AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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## INTEREST OF *AMICI CURIAE*

*Amici curiae* are newspaper and magazine publishers, radio and television broadcasters, cable networks and organizations of journalists and publishers that regularly cover and report upon criminal prosecutions across this Nation (the "*Press Amici*").[1] *Press Amici* take no position on whether Petitioner Skilling's conviction should stand on the record before the Court, but submit this Brief in opposition to his contention that a pretrial "presumption of prejudice" should be irrefutable, and to highlight for the Court the adverse consequences that would flow from such a holding. To declare that a pretrial "presumption of prejudice" cannot be rebutted would impose new pressures upon trial courts to limit public and press access in high profile cases, perversely encouraging more activity to be conducted outside of public view in the very criminal prosecutions of greatest concern to the public. Such a step would both weaken the integrity of the judicial system and undermine public confidence in the courts.

*Press Amici* are regularly confronted by claims from criminal defendants that courtrooms should be closed, judicial records sealed, and trial participants

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[1] A complete list of the *amici* is set out in Appendix A to this brief. Pursuant to S. Ct. R. 37.6, the *amici* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief.

"gagged" from speaking with the press, when criminal prosecutions attract widespread attention. This Court's precedents currently provide clear standards on the limited circumstances when such steps to restrict public access are allowed. *Press Amici* have a vital interest in ensuring that the decision in this case, in its discussion of the circumstances under which a presumption of prejudice may properly be found and in defining the appropriate response to such a finding, does not inadvertently undermine those standards.

## SUMMARY OF ARGUMENT

1. Declaring a pretrial presumption of prejudice to be *irrebuttable* would create a significant new incentive to restrict press coverage of the most intensely followed prosecutions and thwart the value of openness. Making the presumption irrebuttable would add pressure on trial courts to close pretrial proceedings, gag lawyers and restrict access to records in order to avoid the potential for a mandatory change of venue with its concomitant disruption, delay and expense. More secrecy, in turn, can only undermine the integrity of the judicial system and the public's confidence that justice is being done.

2. Any standard for identifying when a presumption of prejudice to the jury pool exists must limit the presumption to the rare case where extraordinary factors beyond just the volume and tenor of pretrial press coverage raise specific and concrete concerns about the ability of jurors to reach a verdict based upon the evidence presented in court.

Criminal defendants regularly object to publicity about their prosecutions, and point to extensive media coverage as sufficient grounds for restricting public access to various aspects of the proceeding. In most cases, these concerns are overstated and properly rejected by trial courts under the existing standards governing the constitutional access right. A relaxed standard for determining when a presumption of prejudice exists would threaten to undermine the public access right. To avoid such a result, the Court should make plain that a presumption of prejudice must be based upon more than the existence of significant publicity, but rather requires additional prejudicial factors. Particularly in a large metropolitan area such as Houston, substantial publicity *alone* should never be sufficient to sustain a presumption of prejudice.

3. Any presumption of prejudice should be rebuttable given the effective remedial tools that are available to a trial court to address concerns that may arise in a high profile criminal prosecution. *Voir dire*, properly used, is an effective device for screening out potentially biased jurors and those who may have prejudged a defendant's guilt or innocence. Other steps, such as calling a larger initial venire, allowing additional preemptory challenges, and strict instructions by the trial court can protect the fair trial right in most circumstances. An extensive record of fair and open trials conducted in the most intensely followed cases—resulting in both acquittals and convictions—confirms the ability of trial courts to ensure fair trials before unbiased juries.

## ARGUMENT

### I. Making a Presumption of Prejudice Irrebuttable Would Undermine the Important Interests Advanced by Open Judicial Proceedings.

If this Court were to declare that a presumption of prejudice arising from extensive pretrial news reporting is irrefutable, and a change of venue mandatory, trial courts would inevitably face increased pressure to restrict access to information in high profile cases to avoid the disruption, delay and expense inherently involved in moving a trial.

The vast majority of requests to close proceedings, issue gag orders or seal records in criminal cases are based upon claims that a defendant's Sixth Amendment rights are in jeopardy from pretrial publicity. *See, e.g., Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 563 (1976) (restraining order against the press issued due to fear that "'pre-trial publicity could impinge upon the defendant's right to a fair trial'") (citation omitted); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 560 & n.2 (1980) (murder trial closed to prevent press reporting from impairing a fair trial); *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510 (1984) (jury selection closed and transcript sealed to protect defendant's fair trial right and jurors' privacy). Given the significant burden and expense involved in a change of venue—relocating records and evidence, securing the attendance of witnesses in a distant forum, attorney travel, and a variety of other inconveniences—the potential that an *irrebuttable* presumption of prejudice might arise would necessarily lead trial courts to limit pretrial access to information about the very cases of greatest interest to the public. This, in turn, would undermine both the effectiveness of the judicial system and public confidence in the courts.

In first articulating a constitutional access right, this Court stressed the important contribution of openness to the proper functioning of the criminal justice system itself. As explained in *Richmond Newspapers, Inc.*, 448 U.S. at 569-70, public access improves the functioning of a trial by, *inter alia*, ensuring that proper procedures are being followed, encouraging those with information to come forward, and creating incentives for all participants to perform well. Public access also discourages perjury, misconduct, and bias, and in this respect "'"is an effective restraint on possible abuse of judicial power."'" *Id.* at 592 (Brennan, J., concurring) (citation omitted). Two years later, in *Globe Newspapers, Inc. v. Superior Court*, 457 U.S. 596, 606 (1982), the Court underscored that by permitting the public to "serve as a check on the judicial process," the access right "enhances the quality and safeguards the integrity of the factfinding process." *Accord Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966) (the press "guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism").

Public access not only improves the actual operation of the justice system, it improves the appearance of justice. This, too, is vitally important because "[p]eople in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Richmond Newspapers*, 448 U.S. at 572. As the Court has explained:

> The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.

*Press-Enterprise Co.,* 464 U.S. at 508. The crucial role that public access plays in ensuring respect for the results produced by a criminal trial is perhaps best illustrated by considering the converse:

> "Secret hearings—though they be scrupulously fair in reality—are suspect by nature. Public confidence cannot long be maintained where important judicial decisions are made behind closed doors and then announced in conclusive terms to the public, with the record supporting the court's decision sealed from public view."

*Gannett Co. v. DePasquale*, 443 U.S. 368, 429 (1979) (Blackmun, J., concurring in part and dissenting in part) (citation omitted); *see also Nebraska Press*

*Ass'n,* 427 U.S. at 587 (Brennan, J., concurring) ("[s]ecrecy of judicial action can only breed ignorance and distrust of courts and suspicion concerning the competence and impartiality of judges"). A responsible press thus has "always been regarded as the handmaiden of effective judicial administration, especially in the criminal field." *Sheppard,* 384 U.S. at 350.

Beyond its critical role in the functioning of the judicial system itself, the right of access also furthers other important interests: It provides an outlet for community hostility, educates the public about the judicial process, and fosters an informed electorate. *E.g., Richmond Newspapers, Inc.*, 448 U.S. at 592; *Globe Newspapers, Inc.*, 457 U.S. at 604-05; *Press-Enterprise Co.*, 464 U.S. at 508-09.

Declaring a presumption of prejudice arising from pretrial press coverage of a prosecution to be irrebuttable would inevitably undermine the many significant public benefits provided by open access to the criminal justice system. This alone is sufficient reason to reject petitioner's request that a presumption of prejudice be declared irrebuttable.

## II. A "Presumption of Prejudice" Should Not Be Based Upon the Level of Press Coverage Alone.

The Fifth Circuit Court of Appeals held that petitioner Skilling "demonstrated sufficient inflammatory and pervasive coverage to raise a presumption of prejudice," Pet. App. 57a, but notably found that "the prejudice came from *more than just* *pretrial media publicity*," *id.* at 58a (emphasis added). Rather, the Court of Appeals based its finding of a presumption of prejudice upon a number of extraordinary factors beyond the press coverage in Houston, including the large percentage of individuals in the community who were directly affected economically by the alleged crime, *id.*, and a guilty plea entered by another defendant shortly before Mr. Skilling's trial was to begin, *id.* at 57a. The "non-media prejudice" in this case renders Mr. Skilling's claim of pretrial prejudice highly *atypical*.

While taking no position on whether the confluence of circumstances in this case is sufficient to sustain the Court of Appeals' finding of a rebuttable presumption of prejudice,[2] this Court's review of that finding should take care to underscore that such a presumption may not properly be based on a high level of press coverage *alone*.

### A. The Impact of Press Coverage on Potential Jurors Is Difficult to Assess and Regularly Overstated.

A high level of press interest in a case, without more, should never be sufficient to presume the existence of prejudice to a defendant's fair trial right because it is extraordinarily difficult to assess the impact of publicity, and too easy to assume adverse consequences that often do not exist. This Court previously has recognized the speculative nature of the impact of pretrial publicity on a fair trial. *E.g.*, *Nebraska Press Ass'n*, 427 U.S. at 565 ("pretrial publicity, even if pervasive and concentrated, cannot be regarded as leading automatically and in every kind of criminal case to an unfair trial"); *see also id.* at 599-600 (difficult to predict "the scope of the audience that would be exposed to the [allegedly prejudicial] information, or the impact . . . the information would have on that audience") (Brennan, J., concurring).

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[2] The finding of a presumption of prejudice by the Court of Appeals was set against the legal backdrop of binding and well-settled Circuit precedent holding that: the "presumption is rebuttable." Pet. App. 55a. *See United States v. Harrelson*, 754 F.2d 1153, 1159 (5th Cir. 1985) (presumption is rebuttable); *United States v. Parker*, 877 F.2d 327, 331 (5th Cir. 1989) (same); *United States v. Smith-Bowman*, 76 F.3d 634, 637 (5th Cir. 1996) (same); *United States v. Lispcomb*, 299 F.3d 303, 337-49 (5th Cir. 2002) (same).

In assessing the potential of press coverage to cause prejudice, moreover, even exposure to prejudicial information does not "*alone* presumptively deprive[] the defendant of due process." *Murphy v. Florida*, 421 U.S. 794, 799 (1975) (emphasis added). Rather, courts "must distinguish between mere familiarity with [the defendant] and his past and an actual predisposition against him . . . ." *Id.* at 800. *Accord Beck v. Washington*, 369 U.S. 541, 557-58 (1962) (although "trial jury had been exposed to some of the [inculpatory] publicity" about defendant, claim of jury bias was still "'a matter of speculation [rather than] a demonstrable reality'") (citation omitted); *Reynolds v. United States*, 98 U.S. 145, 155-56 (1878) ("every case of public interest is almost, as a matter of necessity, brought to the attention of all the intelligent people in the vicinity, and scarcely any one can be found among those best fitted for jurors who has not read or heard of it, and who has not some impression or some opinion").

In highly publicized cases "'[t]he relevant question is not whether the community remembered the case, but whether the jurors . . . had such fixed opinions that they could not judge impartially the guilt of the defendant.'" *Mu'Min v. Virginia*, 500 U.S. 415, 430 (1991) (quoting *Patton v. Yount*, 467 U.S. 1025, 1035 (1984)). As the Court instructed in *Irvin v. Dowd*, 366 U.S. 717, 723 (1961):

> To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

*See also United States v. Haldeman*, 559 F.2d 31, 61-62 (D.C. Cir. 1976) (only press coverage specifically questioning the defendant's guilt or innocence is directly relevant to the issue of potential prejudice); *United States v. Campa*, 459 F.3d 1121, 1144 (11th Cir. 2006) (prejudice "cannot be presumed from pretrial publicity regarding peripheral matters that do not relate directly to the defendant's guilt for the crime charged").

*Press Amici* do not intend to disparage all claims of prejudice regardless of their factual predicate, but claims based solely on pretrial news reporting are regularly overstated and virtually impossible to assess before *voir dire* occurs. Experience has shown, time and again, the exaggerated nature of claims bemoaning the inability to seat a jury unaffected by press coverage, even in the highest profile cases. As the Fourth Circuit Court of Appeals in 1989 cogently summarized nearly two decades of experience with highly publicized criminal prosecutions after this Court's ruling in *Sheppard v. Maxwell*:

> Cases such as those involving the Watergate defendants, the Abscam defendants, and more recently, John DeLorean, all characterized by massive pretrial media reportage and commentary, nevertheless proceeded to trial with juries which—remarkably in the eyes of many—were satisfactorily disclosed to have been unaffected (indeed, in some instances, blissfully unaware of or untouched) by that publicity.

*In re Charlotte Observer (United States v. Bakker)*, 882 F.2d 850, 855-56 (4th Cir. 1989). *See also CBS, Inc. v. U.S. District Court (United States v. DeLorean)* 729 F.2d 1174, 1179 (9th Cir. 1984) ("even when exposed to heavy and widespread publicity many, if not most, potential jurors are untainted by press coverage").

For example, in the prosecution of Attorney General John Mitchell and President Nixon's top aides for their roles in the Watergate conspiracy, the Court of Appeals for the District of Columbia found defendants' pretrial claims that it would be impossible to seat a jury untainted by press coverage to have been flatly refuted during *voir dire*: "Most of the venire simply did not pay an inordinate amount of attention to Watergate. This may come as a surprise to lawyers and judges, but it is simply a fact of life that matters which interest them may be less fascinating to the public generally." *Haldeman*, 559 F.2d at 62 n.37.

The Second Circuit reached a similar conclusion during the highly publicized prosecution of several members of Congress caught in the federal "Abscam" sting operation, in which FBI agents posed as wealthy Arab businessmen offering bribes for legislative favors. *In re NBC*, 635 F.2d 945 (2d Cir. 1980). Despite the "explosion of publicity in the national and local media" and "contrary to the expectations of [the criminal defendants] . . . , only about one-half of the prospective jurors indicated that they had ever heard of Abscam" and in the large venire called "only eight or ten had 'anything more than a most generalized kind of recollection what it was all about.'" *Id.* at 947-48 (citation omitted). *See also United States v. McVeigh*, 153 F.3d 1166, 1180-81, 1184 n.6 (10th Cir. 1998) (more than one half of potential jurors were unaware of Timothy McVeigh's purported confession to the Oklahoma City bombing despite ubiquitous press coverage).

Courts have also regularly called into question the reliability of the often methodologically suspect and speculative nature of polling data typically offered to demonstrate presumed prejudice within a general jury pool. The Eighth Circuit Court of Appeals, for example "has expressed doubts about the relevance of such polls when reviewing rejected change-of-venue motions" and has taken note that "[a]t least three other circuits have declined to rely on public opinion polls when reviewing denials of motions for change of venue in criminal cases." *United States v. Rodriguez*, 581 F.3d 775, 785-86 (8th Cir. 2009). *See also Campa*, 459 F.3d at 1146 (finding poll "too ambiguous to be reliable"); *Haldeman*, 559 F.2d at 64 n.43 ("public opinion poll data . . . is open to a variety of errors"); *South Carolina v. Truesdale*, 296 S.E.2d 528, 531 (S.C. 1982) ("profound difficulty lies in the standards of proof applied" to polls offered to demonstrate prejudice).[3]

The observation of the Court of Appeals for the District of Columbia is particularly apt regarding the lack of utility of such polling data:

> It is our judgment that in determining whether a fair and impartial jury could be empanelled the trial court did not err in relying less heavily on a poll taken in private by private pollsters and paid for by one side than on a recorded, comprehensive

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[3] *Accord, e.g., United States v. Malmay*, 671 F.2d 869, 875-76 (5th Cir. 1982); *Bundy v. Dugger*, 850 F.2d 1402, 1425 (11th Cir. 1988); *United States v. Mandel*, 431 F. Supp. 90, 100-01 (D. Md. 1977); *United States v. Means*, 409 F. Supp. 115, 116 (D. N.D. 1976) (contrary to testimony of survey expert, "jurors [can] recognize and discipline their prejudices, and make factual judgments from the evidence before them").

> *voir dire* examination conducted by the judge in the presence of all parties and their counsel pursuant to procedures, practices and principles developed by the common law since the reign of Henry II.

*Haldeman*, 559 F.2d at 64 n.43. *See also* Kevin F. O'Malley, FEDERAL JURY PRACTICE & INSTRUCTIONS—*Jury Trial* §2:2 (6th ed. 2009) (opinion "polls, for the most part, have not proven to be convincing given that a court can ferret out bias through effective *voir dire*").

Particularly in large metropolitan areas, widespread press coverage should never be sufficient to presume prejudice. Even in a small community pervasive publicity does not necessarily prevent the seating of an impartial jury, but this Court has recognized that the size of the jury pool is self-evidently a significant factor in the presumed prejudice analysis, and indeed may be dispositive in some cases. *Compare Irvin*, 366 U.S. at 725 (rural county where murder defendant was tried had 30,000 persons and criminal trial "had become the cause célèbre of this small community") *with Mu'Min*, 500 U.S. at 429 (observing that suburban county in which murder defendant was tried "is a part of the metropolitan Washington [D.C.] statistical area, which has a population of over 3 million, and in which, unfortunately, hundreds of murders are committed each year"). *See also, e.g., Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1044 (1991) (no likelihood of prejudice where "potential jury venire would be drawn" from a pool of 600,000 persons and trial not imminent).

Experience convincingly establishes that claims of potential prejudice based on press coverage are regularly overstated, and the simple volume of reporting provides an unreliable predictor of a court's ability to seat an impartial jury. The finding of a presumption of prejudice must be limited to those extraordinary cases where a confluence of factors beyond adverse pretrial publicity combine to render highly suspect the impartiality of an overwhelming majority of the potential jury pool.

### B. This Court's Past Findings of Presumed Prejudice Have Rested on More Than the Volume and Tenor of Pretrial Press Coverage.

Precedent of this Court supports the proposition that a presumption of prejudice should not be based solely upon extensive news reporting about a criminal proceeding. As recognized in *Nebraska Press Association*, 427 U.S. at 554, "pretrial publicity[—]even pervasive, adverse publicity[—] does not inevitably lead to an unfair trial." In *Gentile*, 501 U.S. at 1054-55, the Court similarly instructed that "[o]nly the occasional case presents a danger of prejudice from pretrial publicity," and pointed to empirical research indicating that "in the few instances when jurors have been exposed to extensive and prejudicial publicity, they are able to disregard it and base their verdict on the evidence presented in court." *See also Irvin*, 366 U.S. at 722 (jurors are not required to be "totally ignorant of the facts and issues involved . . . and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case").

Understanding that even pervasive publicity is not inconsistent with a fair trial, this Court's decisions addressing the fair trial right typically have found prejudice to exist when factors *beyond* pretrial publicity serve to inflame the jury pool or interfere with the decorum of a trial, such as the circus-like atmosphere infecting the trial proceedings in *Estes v. Texas*, 381 U.S. 532 (1965) and *Sheppard v. Maxwell*, 384 U.S. 333 (1966). In those cases the Court found that unusual circumstances attendant in part to the broadcasting of the trials during the relative infancy of the television age "were entirely lacking in the solemnity and sobriety to which a defendant is entitled." *Murphy*, 421 U.S. at 799.

In *Sheppard*, for example, "bedlam reigned at the courthouse during the trial and newsman took over practically the entire courtroom, hounding most of the participants in the trial." 384 U.S. at 355; *see also id.* at 345 (noting that the "court permitted photographers to take pictures of the jury in the box" and "pictures of the jury appeared over 40 times in the Cleveland papers alone"). Similarly, in *Estes*,

> at least 12 cameramen were engaged in the courtroom throughout the [pretrial] hearing taking motion and still pictures and televising the proceedings. Cables and wires were snaked across the courtroom floor, three microphones were on the

> judge's bench and others were beamed at the jury box and the counsel table.

381 U.S. at 536; *id.* at 551 ("four of the jurors selected had seen all or part of those [pretrial] broadcasts").[4]

In the few cases where prejudice has been presumed based upon pretrial publicity, the finding arose from the extreme nature of the content of the coverage, not on its volume alone, and from the very large percentage of the jury pool exposed to the prejudicial reports. *Rideau v. Louisiana* and *Irvin v. Dowd*, for example, involved the most extremely inflammatory and inculpatory publicity, including the defendants' confession to a particularly reprehensible crime. *See Rideau v. Louisiana*, 373 U.S. 723, 724 (1963) (finding presumption of prejudice because two-thirds of a community of 150,000 had seen and heard the defendant's televised confession to "kidnapping and murder");[5] *Irvin*, 366 U.S. at 728 (finding presumption of prejudice where pretrial reports of defendant's confession to six murders and twenty-four burglaries was publicized extensively in county of 30,000 and two-thirds of jurors seated "had an opinion that petitioner was guilty and were familiar with the material facts").

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[4] Of course, and as the Court predicted, the technological advances in the broadcasting of trials have rendered the presence of courtroom cameras unobtrusive and unremarkable. *See Estes*, 381 U.S. at 595 (Harlan, J., concurring) ("[T]he day may come when television will have become so commonplace an affair in the daily life of the average person as to dissipate all reasonable likelihood that its use in courtrooms may disparage the judicial process."); *Chandler v. Florida*, 449 U.S. 560, 582-83 (1981) (unanimously holding that televised proceedings do not amount to a *per se* violation of a defendant's Sixth Amendment rights); *accord Hollingsworth v. Perry*, No. 09A648, 558 U.S. ---, 2010 WL 105264, at *8 (Jan. 13, 2010) (*per curiam*) ("arguments in favor of developing procedures and rules to allow broadcast of certain cases have considerable merit . . . ."). Indeed, all fifty states now allow cameras in their courtrooms in at least some types of judicial proceedings, and thirty-seven states allow cameras in criminal proceedings. *See* National Center for State Courts, *Summary of TV Cameras in the State Courts* (Aug. 1, 2001), http://www.ncsconline.org/WC/Publications/KIS_CameraPub.pdf.

Courts throughout the country have construed this Court's decisions addressing presumed prejudice to require either a "circus-like atmosphere" infecting the trial itself (*Estes*, *Sheppard*), or extremely inflammatory and prejudicial publicity (*e.g.*, a defendant's inadmissible confession to a particularly violent crime) to which essentially an entire small community has been exposed (*Rideau*). *See, e.g., United States v. Lawson*, 535 F.3d 434, 441 (6th Cir. 2008) (finding presumption of prejudice was inappropriate "since a circus-like atmosphere did not pervade the courthouse and surrounding community"); *Stafford v. Saffle*, 34 F.3d 1557, 1566 (10th Cir. 1994) (limiting presumed prejudice finding to circumstances characterized by "a circus atmosphere or a lynch mob mentality, or that a suppressed confession was broadcasted, or of any other community-wide rush to judgment"); *Campa*, 459 F.3d at 1150 ("[t]he rare instances in which the Supreme Court has presumed prejudice [have involved] 'kangaroo court proceedings' in combination with the 'circus atmosphere' generated by sensational pretrial publicity") (citation omitted); *Haldeman*, 559 F.2d at 61 n.32 (this Court's pretrial publicity decisions characterized by "preventable intrusions on the trial process" or a "pattern of deep and bitter prejudice shown to be present throughout the community") (internal quotation marks and citations omitted).

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[5] The jailhouse confession in *Rideau v. Louisiana* came in response to an interrogation by the sheriff and was broadcast on three consecutive days on local television before audiences of 24,000, 53,000 and 20,000, respectively. 373 U.S. at 724. Three of the jurors seated had seen the confession and two jurors were deputy sheriffs. *Id.* at 725. The Court characterized these events as little more than "kangaroo court proceedings," and determined that the jury pool "had been exposed repeatedly and in depth to the spectacle of Rideau personally confessing in detail to the crimes." *Id.* at 726.

The highly unusual circumstances where this Court has found a presumption of prejudice bear little resemblance to even the most newsworthy criminal proceedings in recent decades. As the Tenth Circuit Court of Appeals observed in the criminal prosecution of Timothy McVeigh for the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, this Court "has not found a single case of presumed prejudice in this country since the watershed case of *Sheppard* [in 1966]." *McVeigh*, 153 F.3d at 1182. *Accord, e.g.*, *Bundy*, 850 F.2d at 1424 (under Court's decisions, the "principle [of presumed prejudice] is rarely applicable and reserved for extreme situations"); *United States v. Chagra*, 669 F.2d 241, 251 (5th Cir. 1982) (holding same).

As this history establishes, a presumption of prejudice in a criminal prosecution requires more than simply a large volume of press coverage—even inflammatory press coverage—and the Court should reaffirm this point in this case.[6]

## III. Given the Effective Remedial Tools Available, There is No Justification for an Irrefutable Presumption of Prejudice.

Even when circumstances create a presumption that the jury pool has been prejudiced, a trial judge has adequate tools to ensure a fair trial in most cases, without requiring a change in venue. A variety of measures are available to a trial judge "to blunt the impact of pretrial publicity," and "the measures a judge takes or fails to take to mitigate the effects of pretrial publicity" can "determine whether the defendant receives a [fair] trial." *Nebraska Press Ass'n*, 427 U.S. at 555. Among the available measures, a trial court can: (1) undertake extensive *voir dire* examination of prospective jurors;

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[6] Petitioner construes the Court's precedents to mandate a "per se transfer/reversal rule" where a presumption of prejudice arises—without regard to the efficacy of *voir dire* in the circumstances of the case. Pet. Br. 32. However, that interpretation has properly been rejected as inconsistent with the actual holding of *Rideau* and subsequent decisions. *See Coleman v. Kemp*, 778 F.2d 1487, 1541 n.25 (11th Cir. 1985) ("We do not read *Rideau* to imply that the voir dire cannot rebut a presumption of prejudice."); *Mayola v. Alabama*, 623 F.2d 992, 1000 (5th Cir. 1980) ("*Rideau* did not go so far as to indicate that voir dire had no role in the paradigm of presumptive prejudice").

(2) enlarge the size of the jury venire; (3) increase the number of peremptory challenges; and (4) use emphatic and clear instructions on the sworn duty of each juror to decide the issues only on the evidence presented in open court. *See Sheppard*, 384 U.S. at 362-63 (cataloging a panoply of prophylactic measures available to judges to prevent unfair prejudice); *Nebraska Press Ass'n*, 427 U.S. at 552-55 (same); *accord People v. Botham*, 629 P.2d 589, 596 (Colo. 1981).

Even in cases that have garnered "massive" or "pervasive" press attention before trial, measures other than a change of venue have often proven sufficient to protect the defendant's fair trial rights. Because effective remedial measures are typically available, a pretrial presumption of prejudice should always be rebuttable.

### A. *Voir Dire* Can Effectively Safeguard Against Juror Prejudice, Even in Cases of Pervasive Pretrial Publicity.

Courts have long found that a thorough *voir dire* examination of potential jurors can effectively eliminate from jury service those so affected by exposure to pretrial publicity that they cannot fairly decide issues of guilt or innocence. As three concurring Justices in *Nebraska Press Association* explained, even where highly prejudicial information is published in advance of a trial, "the Sixth Amendment rights of the accused may still be adequately protected" through the use of *voir dire* probing "fully into the effect of publicity." 427 U.S.

at 601-02 (Brennan, J., concurring).[7] The Court made the same point in *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981), noting the obligation of a trial judge to conduct "an adequate *voir dire*" in order to "remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence." *See also Mu'Min*, 500 U.S. at 431 (*voir dire* "serves the dual purposes of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges"); *accord In re Charlotte Observer*, 882 F.2d at 856 ("*voir dire* can serve in almost all cases as a reliable protection against juror bias however induced").

Particularly when a criminal trial is conducted in a large metropolitan area like New York City, Los

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[7] Justices Brennan, Stewart and Marshall gave further direction on how such *voir dire* should be conducted:

> Particularly in cases of extensive publicity, defense counsel should be accorded more latitude in personally asking or tendering searching questions that might root out indications of bias, both to facilitate intelligent exercise of peremptory challenges and to help uncover factors that would dictate disqualification for cause. Indeed, it may sometimes be necessary to question on *voir dire* prospective jurors individually or in small groups, both to maximize the likelihood that members of the venire will respond honestly to questions concerning bias, and to avoid contaminating unbiased members of the venire when other members disclose prior knowledge of prejudicial information.

*Nebraska Press Ass'n*, 427 U.S. at 602.

Angeles, Miami, or Houston,[8] it is almost inconceivable that a court cannot find twelve jurors who either have not been exposed to a significant amount of pretrial publicity concerning the case[9], or who cannot otherwise faithfully discharge their sworn duty to render an impartial verdict based exclusively on the evidence presented in court. As the Ninth Circuit Court of Appeals has observed:

> [I]n a large metropolitan area, prejudicial publicity is less likely to endanger the defendant's right to a fair trial. The size and heterogeneity of such communities make it unlikely that even the most sensational case will become a "*cause célèbre*" where "[t]he whole community . . . becomes interested in all the morbid details." Moreover, in a populous metropolitan area, the pool of potential jurors is so large that even in cases attracting extensive and inflammatory publicity, it is usually possible to find an adequate number of untainted jurors.

*CBS, Inc.*, 729 F.2d at 1181 (citations omitted) (collecting authorities holding same). *See, e.g.*, *People v. Manson*, 132 Cal. Rptr. 265, 318 (1976) ("[a]

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[8] The petitioner here was tried in the Houston Division of the Southern District of Texas, which is comprised of 13 counties and in 2004 had a population of approximately 4.5 million persons. Resp. Br. 32.

[9] In the case at bar, thirty-seven of forty-three potential jurors questioned individually stated that they had limited exposure to media coverage of Enron. Resp. Br. 12.

metropolitan setting with its diverse population tends to blunt the penetrating effect of publicity."); *Campa*, 459 F.3d at 1154 ("Miami-Dade County is a widely diverse, multi-racial community of more than two million people. Nothing in the trial record suggests that twelve fair and impartial jurors could not be assembled by the trial judge . . . ."); *United States v. De La Vega*, 913 F.2d 861, 865 (11th Cir. 1990) (impact of more than three hundred newspaper articles did not create a presumption of prejudice "where the relevant community contained approximately 1.8 million persons").

In short, even when a general venire has been exposed to "pervasive" and even "inflammatory" pretrial publicity, experience establishes that *voir dire* (among other prophylactic and curative measures) is almost always a constitutionally adequate means to seat an impartial jury. Rather than making a presumption of prejudice irrebuttable and mandating a change of venue, a decision on the actual need for venue change should be based upon the information gleaned from the *voir dire* process itself. *See, e.g.*, *Nebraska Press Ass'n*, 427 U.S. at 603 (Brennan, J., concurring) ("*voir dire* may indicate the need to grant a brief continuance or to grant a change of venue"); *United States v. Yousef*, 327 F.3d 56, 155 (2d Cir. 2003) ("the key to determining the appropriateness of a change of venue is a searching *voir dire* of the members of the jury pool."); *accord* 1 National Jury Project, Inc., JURYWORK SYSTEMATIC TECHNIQUES §7:38 (2009) ("common practice [is] for trial judges to wait until jury selection is complete before deciding whether a change of venue is necessary").[10]

### B. Experience Demonstrates That Even Extensive Media Coverage Need Not Prevent a Fair Trial.

This nation's experience with "notorious" and "high-profile" criminal proceedings (regularly dubbed "trial of the century" cases) demonstrates that pervasive pretrial publicity does not prevent a criminal defendant from obtaining a fair trial. The *presumption* of prejudice can be, and has been, rebutted time and again.

Shortly after our nation was founded, for example, one of the most notorious trials in our history took place amidst a firestorm of press coverage and intense public debate: The publicity surrounding the trial of Aaron Burr on charges of treason caused the defendant to complain that "the public mind ha[s] been so filled with prejudice against him that there was some difficulty in finding impartial jurors." *United States v. Burr*, 25 F. Cas. 49, 49 (Cir. Ct. D. Va. 1807). *See also Nebraska Press Ass'n*, 427 U.S. at 548 ("Few people in the area of Virginia from which jurors were drawn had not formed some opinions concerning Mr. Burr or the case, from newspaper accounts and heightened discussion both private and public."). The then-sitting President, Thomas Jefferson, publicly declared prior to the trial that Burr was guilty. Nevertheless, after Chief Justice John Marshall's "careful *voir dire* inquiry into the matter of possible bias," *id.*, the jury acquitted.

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[10] Indeed, given the nature of nationally distributed news coverage, a rule mandating change of venue whenever presumed prejudice is found might render it all but impossible for a defendant like a Timothy McVeigh, Nidal Hasan, or Michael Jackson to obtain a trial anywhere. *See, e.g.*, *Mu'Min*, 500 U.S. at 450 (Kennedy, J., dissenting) (a rule disqualifying a juror due to exposure to publicity would mean "suspects in many celebrated cases might be able to claim virtual immunity from trial"); *Campa*, 459 F.3d at 1148 n.243 (prejudice "spread through multiple forms of media . . . would not stop at district lines"); *Calley v. Callaway*, 519 F.2d 184, 210 (5th Cir. 1975) (disqualifying from jury service those "who have heard about an alleged crime" could mean "truly heinous or notorious acts will go unpunished").

Similarly, in a more recent "trial of the century," *People v. O.J. Simpson*, Case No. BA097211 (L.A. Super. Ct. filed Sept 27, 1994), a defendant accused of brutally murdering a wife and her purported paramour was acquitted notwithstanding a level of press coverage arguably not seen before or since. *See* Thomas L. Jones, *The O.J. Simpson Murder Trial: Prologue*, TRUTV, http://www.trutv.com/library/crime/notorious_murders/famous/simpson/index_1.html ("2000 reporters covered the trial. . . . There were over 80 miles of cable servicing 19 television stations and eight radio stations. 23 newspaper and magazines were represented" and an estimated "142 million people listened on radio and watched television as the verdict was delivered").

And in other high-profile trials of national celebrities, the late "King of Pop" Michael Jackson was acquitted of molesting a young boy, and "Baretta" star Robert Blake was acquitted of murdering his wife, despite non-stop press coverage of those crimes.[11]

Nor does pretrial publicity of specific inculpatory information automatically defeat a defendant's fair trial rights within a jurisdiction, given the remedial measures available to the trial court. In 1984, for example, celebrity car manufacturer John DeLorean was acquitted on drug conspiracy charges, despite the repeated broadcast before trial of a videotape showing DeLorean discussing the sale of millions of dollars worth of cocaine with undercover federal agents. *See CBS, Inc.*, 729 F.2d at 1176 (vacating prior restraint order prohibiting television network from broadcasting the government's surveillance tapes). In the widely followed prosecution, the trial judge in the DeLorean case excoriated the press for publicly assessing before trial the credibility and background of an alleged government informant and witness:

> It is obvious that these articles, which were based upon unproven allegations contained in documents filed with this court prior to

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[11] *See* Dan Glaister & David Teather, *Jackson Found Not Guilty: Singer Cleared of Molesting Child*, THE GUARDIAN (LONDON), June 14, 2005, at 1 (reporting statement from Jackson jury that it felt "the weight of the world's eyes upon us" and it "thoroughly and meticulously studied the testimony, evidence and rules of procedure presented in this court" in reaching verdict); Greg Risling, *Actor Robert Blake Acquitted of Murdering His Wife*, THE ASSOCIATED PRESS, March 17, 2005 ("the state simply didn't make its case, jurors said" in the Blake prosecution, despite fact that case "provided endless fodder for the tabloids and cable networks").

> its sealing order, both prejudice defendant DeLorean and compromise the integrity of the entire proceeding by "trying the action in the newspapers" on the basis of what may ultimately be false or groundless allegations.

*United States v. DeLorean*, 561 F. Supp. 797, 802 (C.D. Cal. 1983). And yet, despite the trial judge's speculation regarding the prejudice to Mr. DeLorean, the defendant was subsequently acquitted.[12]

Most recently, two prominent hedge fund managers for the trading company Bear Stearns went to trial following extensive publicity characterizing their prosecution as an effort to hold individuals accountable for the massive collapse of the sub-prime mortgage market that affected millions of investors. *See* Patricia Hurtado, *et al.*, *Bear Managers' Acquittal May Hamper U.S. Fraud Prosecutions*, BLOOMBERG NEWS, Nov. 11, 2009. Defendants Ralph Cioffi and Matthew Tenon were acquitted, despite the widespread publicity blaming them for a role in the collapse of the economy. *See* Patricia Hurtado, *et al.*, *Ex-Bear Fund Managers Not Guilty of Subprime Fraud*, BLOOMBERG NEWS, Nov. 10, 2009.

Other criminal defendants whose alleged crimes were the subject of massive media coverage in the local venues but who were nevertheless acquitted by juries include Angela Davis, an African-American activist accused of kidnapping and murdering a judge. *See* Earl Caldwell, *Angela Davis Acquitted on All Charges*, N.Y. TIMES, June 5, 1972. *See also, e.g.*, *Puff Daddy Acquitted; Rap Star, Bodyguard Found Not Guilty; Barrow Convicted on Lesser Charges*, ABC NEWS, March 17, 2001, http://abcnews.go.com/Entertainment/story?id=108138 (Shawn "P. Diddy" Combs, a rap music recording artist, acquitted of gun possession and bribery charges in relation to a nightclub shooting in December 1999); Paul Feldman, *All 'Twilight Zone' Figures Acquitted; Jurors Clear Director Landis and 4 Others of Manslaughter Charges*, L.A. TIMES , May 30, 1987 (movie director John Landis, acquitted of charges of manslaughter in connection with the 1982 deaths of three actors killed during the making of the movie *Twilight Zone*, even though Landis acknowledged that child labor laws were violated).

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[12] The broad docket sealing order issued by the *DeLorean* trial court was vacated by writ of mandamus. *Associated Press v. U.S. District Court*, 705 F.2d 1143, 1147 (9th Cir. 1983).

An acquittal on some counts or with respect to certain defendants, as happened in this case,[13] also indicates that a jury discharged its responsibilities impartially. *See, e.g.*, *United States v. Rugiero*, 20 F.3d 1387, 1389 (6th Cir. 1994) (jury's acquittal on some counts shows it was not influenced by exposure to prejudicial television reports); *Haldeman*, 559 F.2d at 60 n.28 (that jury acquitted one defendant "is some indication that the voir dire examination succeeded in eliminating any unfairness that might otherwise have resulted from the pretrial publicity").[14] Again, the examples of such outcomes in high profile cases are legion. In the 1970s, for example, New York Congressman Mario Biaggi and New York Democratic County Executive Committee Chairman Meade Esposito were convicted, *inter alia*, of accepting gratuities for official acts and violating the Travel Act, but were acquitted of more serious charges that they had conspired to defraud the federal government and had taken bribes. *See United States v. Biaggi*, 853 F.2d 89 (2d Cir. 1988). Other high-profile defendants who were acquitted of some or all charges despite massive pretrial publicity included Klaus von Bulow,[15] Imelda Marcos,[16] accused axe murderess Lizzie Borden,[17] and, ultimately, the defendant in *Sheppard v. Maxwell.*[18]

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[13] Here, Mr. Skilling was acquitted on nine of the counts with which he was charged. Resp. Br. 13.

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[14] *Accord United States v. Elder*, 90 F.3d 1110, 1120 (6th Cir. 1996) (holding jury exposure to highly publicized evidence of murder charges against one defendant for the killing of four children did not require trial court's severance of defendants' trials, as "[n]one of the defendants who were indicted on multiple counts were convicted for all the counts for which they were indicted, and the verdicts reflected an individualized determination of each defendant's guilt"), *United States v. Smith*, 918 F.2d 1551, 1560 (11th Cir. 1990) (observing "convictions invariably are sustained when it may be inferred from the verdict that the jury meticulously sifted the evidence, by acquitting on particular counts indicating an individual assessment of the guilt of each defendant") (internal quotation marks and citations omitted).

[15] Tom Stites, *'5 Years of Worry' Over as Jury Acquits Von Bulow*, CHICAGO TRIBUNE, June 11, 1985.

[16] Craig Wolff, *The Marcos Verdict; Marcos Is Cleared of All Charges In Racketeering and Fraud Case*, N.Y. TIMES, July 3, 1990.

Even when criminal defendants in notorious high-profile cases have been convicted, reviewing courts have found that the use of *voir dire* and other curative techniques were effective in ensuring those defendants a fair trial, free from juror bias or actual prejudice. In one of the most widely publicized criminal cases in this nation's history, for example, Timothy McVeigh was accused of bombing the federal building in Oklahoma City. Charged with the worst act of domestic terrorism ever committed on U.S. soil, media coverage of the arrest and prosecution of McVeigh was practically ubiquitous. *See McVeigh*, 153 F.3d at 1179-81.

Although the trial was moved from Oklahoma City to Denver, the case received pervasive "saturation" press coverage in the days and weeks leading up to the trial. Less than a month before trial, that reporting included nationwide publication, on multiple occasions through scores of media outlets, of a purported confession by McVeigh that was allegedly leaked by an investigator within the defense team. *See id.* at 1180. In these press accounts, McVeigh was reported to have methodically timed his attack on the federal building "in order to obtain a higher 'body count.'" *Id.* (citation omitted). Despite the extensive reporting of McVeigh's own highly inculpatory statements, the trial court denied a defense motion to postpone the trial for a year:

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[17] Judge Robert Sullivan, GOODBYE LIZZIE BORDEN, 193 (1974).

[18] Following the reversal of his conviction by this Court, Sam Sheppard was retried and acquitted in a trial employing safeguards that his first trial had lacked. *Nebraska Press Ass'n*, 427 U.S. at 553-54. Sheppard's acquittal came despite the massive publicity that surrounded his first trial, the reversal of his conviction and his subsequent retrial. *See Sheppard*, 384 U.S. at 356 ("'Murder and mystery, society, sex and suspense were combined in this case in such a manner as to intrigue and captivate the public fancy to a degree perhaps unparalleled in recent annals.'") (citation omitted).

> There is no reason to believe that fair-minded persons would be so influenced by anything contained in this recent publicity that they would not be ready, willing and able to perform the duty to follow the law and decide according to the evidence presented in a vigorously contested trial.
>
> A salient virtue of a free people in an open society is a healthy skepticism about what they are told. We have a strong tradition of civic responsibility and the great majority of our citizens consistently display a respect for fair play in all aspects of their lives. The extensive voir dire to be conducted in this case will determine whether the persons summoned from 23 counties in Colorado include at least 18 people who can serve as jurors and alternates in the forthcoming trial. I have full confidence that a fair minded jury can and will be empanelled and that those

> selected will return a just verdict based on the law and evidence presented to them.

*United States v. McVeigh*, No. 96-CR-68-M, 1997 WL 117369, at *3 (D. Colo. Mar. 17, 1997).[19]

After McVeigh was convicted and sentenced to death, he appealed his conviction on grounds that the saturation pretrial reporting about the confession presumptively prejudiced his right to a fair trial. The Tenth Circuit rejected his arguments, finding that even nationwide publication of a purported *confession* on the *eve of trial* had not prejudiced his fair trial right. *See McVeigh*, 153 F.3d at 1183-84.[20] The court concluded that the prophylactic measures of *voir dire* and jury admonitions had been sufficient to protect the defendant's fair trial rights: "Questioning by the court and the parties [during *voir dire*] goes a long way towards ensuring that any prejudice, no matter how well hidden, will be revealed . . . . [W]e give due deference to jurors' declarations of impartiality and the trial court's credibility determination that those declarations are sincere." *Id.* at 1184.

Again, in *Mu'Min v. Virginia*, 500 U.S. 415 (1992), the facts of the crime and of the pretrial publicity were both of an inherently inflammatory nature. Mu'Min was a prisoner in the Virginia prison system who, while on a work detail away from the prison, escaped during a lunch break and travelled on foot to a nearby shopping center, where he used a self-made knife to rape, rob, and murder a local shopkeeper. *Id.* at 418. In support of his unsuccessful motion for a change of venue, Mu'Min tendered 47 newspaper articles that related to the murder. *Id.* The articles contained details of Mu'Min's prior criminal record, including his prior murder conviction, six parole rejections, and alleged prison infractions. *Id.* Moreover,

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[19] The Tenth Circuit rejected McVeigh's Petition for a Writ of Prohibition, on grounds that it was premature because *voir dire* had not yet begun. *United States v. McVeigh*, No 97-1117, 1997 WL 154760 (10th Cir. Mar. 28, 1997) (*per curiam*).

[20] Forty out of the ninety-nine venirepersons, and four of the seated jurors reported having heard about McVeigh's alleged confession. *McVeigh*, 153 F.3d at 1181, 1184 n.6.

> [t]he circumstances of the murder generated intense local interest . . . . Most of the stories were carried on the front pages of local papers, and almost all of them were extremely prejudicial to Mu'Min. Readers of local papers learned that [the murder victim] had been discovered in a pool of blood, with her clothes pulled off and semen on her body. In what was described as a particularly "macabre" side of the story, a local paper reported that, after raping and murdering Nopwasky, Mu'Min returned to the work site to share lunch with other members of the prison detail.
>
> Readers also learned that Mu'Min had confessed to the crime. Under the banner headlines "Murderer Confesses to Killing Woman," and "Inmate Said to Admit to

> Killing," the press [. . . reported] that the State had already secured Mu'Min's acknowledgement of responsibility for the murder . . . . [A]ccording to these reports, Mu'Min . . . confessed to having stabbed Nopwasky twice with a steel spike, once in the neck and once in the chest . . . .

*Id.* at 435-36 (Marshall, J., dissenting) (citations omitted). Notably, of the twelve jurors who decided Mu'Min's case, eight acknowledged that they had read or heard something about the case. *Id.* at 421.

Nevertheless, this Court was satisfied that the trial court's *voir dire*—including excusing one juror for cause and another *sua sponte* when she equivocated as to her impartiality—was adequate to protect the defendant's rights to a fair and impartial jury. *Id.* at 431. The Court found that Mu'Min's request to *voir dire* the jurors concerning the content of what they had read or seen was not constitutionally required, because

> [n]one of those eventually seated stated that he had formed an opinion or gave any indication that he was biased or prejudiced against the defendant. All swore that they could enter the jury box with an open mind and wait until the entire case was presented before reaching a conclusion as to guilt or innocence.

*Id.* at 421.

At bottom, overwhelming precedent—from this Court and the Courts of Appeals—demonstrates the efficacy of properly conducted *voir dire* in protecting the fair trial right in even the most notorious cases: "[T]he method we have relied on since the beginning, *e.g., United States v. Burr*, usually identifies bias." *Patton*, 467 U.S. at 1038. Given the unreliability of claims of prejudice, the availability of myriad means available to trial court judges to protect against juror bias, and the significant public damage caused by increased secrecy, petitioner's request to declare a presumption of prejudice irrebuttable should be rejected.

## CONCLUSION

For each and all the foregoing reasons, the Court should reject petitioner's request to declare that a pretrial presumption of prejudice is irrebuttable.

February 2, 2010

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# APPENDIX

# APPENDIX

**ABC, Inc.** is a broad-based communications company with significant holdings in the United States and abroad. Alone or through its subsidiaries, it owns ABC News, abcnews.com, and local broadcast television stations that regularly gather and report news to the public. ABC News produces the television programs *World News* with Diane Sawyer, *20/20*, *Primetime*, *Good Morning America* and *Nightline*, among others.

**Advance Publications, Inc.**, directly and through its subsidiaries, publishes over 20 magazines with nationwide circulation, daily newspapers in over 20 cities, and weekly business journals in over 40 cities throughout the United States. It also owns, directly or through its subsidiaries, many internet sites and has interests in cable systems serving over 2.3 million subscribers.

**The Associated Press** (AP) is a not-for-profit mutual news cooperative. The members of AP are more than 1,500 newspapers and more than 5,000 television and radio stations throughout the United States. AP also serves thousands of subscribing newspapers, news networks and other publishers and distributors of news worldwide. Founded in 1848, AP is now the largest newsgathering organization in the world.

**Bloomberg L.P.** operates Bloomberg News, which is comprised of more than 1,500 reporters in 145 bureaus around the world. Bloomberg News publishes more than 6,000 news stories each day, electronically delivering business, financial, and legal news to more than 300,000 business and financial professionals in real-time through the Bloomberg Professional Systems, a propriety desktop system. Bloomberg News also operates as a wire service, distributing news to more than 450 newspapers worldwide with a combined circulation of 80 million people. Bloomberg News operates eleven 24-hour cable and satellite news channels broadcasting worldwide in six different languages; WBBR, a 24-hour business news radio station; Bloomberg Press, a book publisher; Bloomberg Magazines and Bloomberg.com, which is read by the investing public more than 300 million times each month.

**Cable News Network LP, LLLP** (CNN), a division of Turner Broadcasting System, Inc., which is a subsidiary of Time Warner Inc., is one of the world's most respected sources for news and information. Its reach extends to more than 10 cable and satellite television networks; one private place-based network; two radio networks; wireless devices around the world; four Web sites, including CNN.com, the first major news and information Web site; CNN Newsource, the world's most extensively syndicated news service; and partnerships for four television networks and one Web site.

**The California Newspaper Publishers Association** (CNPA) is a non-profit trade association representing more than 800 daily, weekly and student newspapers in California. CNPA has defended the First Amendment rights of publishers to disseminate and the public to receive news and information for well over a century.

**Dow Jones & Company, Inc.** is the publisher of *The Wall Street Journal*, a daily newspaper with a national circulation of over two million, *WSJ.com*, a news website with more than one million paid subscribers, *Barron's*, a weekly business and finance magazine, and through its Dow Jones Local Media Group, community newspapers throughout the United States. In addition, Dow Jones provides real-time financial news around the world through Dow Jones Newswires as well as news and other business and financial information through Dow Jones Factiva and Dow Jones Financial Information Services.

**The First Amendment Coalition** is a nonprofit public interest organization dedicated to advancing free speech and open-government rights. A membership organization, The Coalition's activities include educational and informational programs, strategic litigation to enhance First Amendment and access rights for the largest number of citizens, legal information and consultation services, and legislative oversight of bills affecting free speech. The Coalition's members are newspapers and other news organizations, bloggers, libraries, civic organizations, academics, freelance journalists, community activists—and ordinary individuals seeking help in asserting rights of citizenship. The Coalition's offices are in San Rafael, California.

**Gannett Co., Inc.** is an international news and information company that publishes 84 daily newspapers in the United States, including *USA TODAY*, as well as nearly 850 non-daily publications. Along with each of its daily newspapers, the company operates Internet sites offering news and advertising that is customized for the market served and integrated with its publishing operations. In broadcasting, the company operates 23 television stations in the U.S. with a market reach of more than 20 million households.

**The Hearst Corporation** is a diversified media company that publishes newspapers, consumer magazines and business publications. Hearst also owns a features syndicate, has interests in several cable television networks, produces programming for television and is the majority owner of Hearst Television Inc., which comprises 29 television and two radio stations, in geographically diverse U.S. markets.

**The McClatchy Company** owns 30 daily newspapers in 29 U.S. markets, including *The Kansas City Star*, *The Sacramento Bee*, *The Miami Herald*, *The Star-Telegram* of Fort Worth, *The Charlotte Observer*, and about 45 non-daily papers. In each of its daily newspaper markets, McClatchy operates the leading local website, offering readers information, comprehensive news, advertising, e-commerce and other services.

**Media Law Resource Center, Inc.** (MLRC) is a non-profit information clearinghouse originally organized by a number of media organizations to monitor developments and promote First Amendment rights in the libel, privacy and related legal fields. MLRC's major projects and programs include various publications, services and events. Some of its most notable resource include the MLRC 50-State Surveys, which provide comprehensive information on the law in all 50 states and the District of Columbia; as well as the MLRC Bulletin, which publishes the results of MLRC-initiated statistical studies on media libel, privacy and related litigation; symposia; and legal research.

**MediaNews Group, Inc.** is one of the largest newspaper companies in the United States situated throughout California, the Rocky Mountain region and the Northeast. It is privately owned and operates 54 daily newspapers in 11 states with combined daily and Sunday circulation of approximately 2.4 million and 2.7 million, respectively. Each of its newspapers maintains a Web site focused on local news content, hosted by MediaNews Group Interactive. MediaNews Group also owns a television station in Alaska and operates radio stations in Texas.

**The New York Times Company** is the owner of *The New York Times*, *The Boston Globe*, the *International Herald Tribune*, 15 other daily newspapers, and more than 50 websites, including NYTimes.com, About.com, and Boston.com.

**The Reporters Committee for Freedom of the Press** is an unincorporated association of reporters and editors which works to defend First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment litigation since 1970.

**The Tribune Company** operates businesses in publishing, broadcasting and on the Internet. In publishing, Tribune's leading daily newspapers include the *Los Angeles Times, Chicago Tribune, The Baltimore Sun, Sun Sentinel* (South Florida), *Orlando Sentinel, Hartford Courant, Morning Call* and *Daily Press.* The company's broadcasting group operates 23 television stations, WGN America on national cable, and Chicago's WGN-AM. Popular news and information websites complement Tribune's print and broadcast properties and extend the company's nationwide audience.

**The Washington Post** (washingtonpost.com) is a leading newspaper with a nationwide daily circulation of over 1.6 million and a Sunday circulation of over 2.2 million. *The Washington Post* is a wholly owned subsidiary of The Washington Post Company. The Washington Post Company also owns Cable ONE, serving subscribers in midwestern, western and southern states; *Express* and *El Tiempo Latino*; Post-Newsweek Stations (Detroit, Houston, Miami, Orlando, San Antonio and Jacksonville); The Slate Group (*Slate*, TheRoot.com, DoubleX, TheBigMoney.com and *Foreign Policy*); *The Gazette* and Southern Maryland Newspapers; *The Herald* (Everett, WA); *Newsweek* magazine (Newsweek.com); *Budget Travel* (BudgetTravel.com); and Avenue100 Media Solutions, an analytics-based performance marketing company.

# AMICUS
# CURIAE
# BRIEF

No. 08-1394

# In the Supreme Court of the United States

JEFFREY K. SKILLING,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

**On Writ of Certiorari**
**to the United States Court of Appeals**
**for the Fifth Circuit**

# BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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## QUESTION PRESENTED

This brief addresses the following, which is fairly included in the first question presented in the petition:

> Whether 18 U.S.C. § 1346 is unconstitutionally vague.

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## INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber"), the world's largest business federation, represents 300,000 direct members and indirectly represents an underlying membership of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of vital concern to the nation's business community.

Like *Black* v. *United States*, No. 08-876 (another "honest services" case in which the Chamber filed an *amicus* brief this Term), this is such a case. Since its enactment in 1988, the "honest services" statute, 18 U.S.C. § 1346, although unintelligible, has been used to target "a staggeringly broad swath of behavior," *Sorich* v. *United States,* 129 S. Ct. 1308, 1309 (2009) (Scalia, J., dissenting from denial of certiorari). The existence of the statute, and the unpredictability of prosecutions based on it, impose an unwarranted burden on American companies and executives, who are entitled to fair notice of what conduct is and is not prohibited. Accordingly, the Chamber and its members have a strong interest in this Court's invalidating section 1346, or at least cabining its otherwise "standardless sweep," *United States* v. *Rybicki*, 354 F.3d 124, 161 (2d Cir. 2003) (en banc) (Jacobs, J., dissenting).

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[1] The parties have consented to the filing of this amicus brief. No counsel for a party has authored this brief in whole or in part, and no counsel for a party or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than *amicus curiae* or its counsel has made a monetary contribution to this brief's preparation or submission.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioner Jeffrey K. Skilling was an executive at Enron Corporation. The government alleged that petitioner and others took improper measures to boost Enron's stock price, and that these activities violated petitioner's duties of candor and loyalty to Enron's employees and shareholders. The latter theory – alleging a deprivation of "honest services" – rested on 18 U.SC. § 1346.

Section 1346 was enacted in 1988 in response to *McNally* v. *United States*, 483 U.S. 350 (1987), which held that the mail-fraud statute, 18 U.S.C. § 1341, was "limited in scope to the protection of property rights," and said that "[i]f Congress desires to go further, it must speak more clearly than it has." *Id.* at 360. Congress spoke, but not clearly. Section 1346 provides in its entirety: "For the purposes of this chapter, the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services."

In an effort to impose reasonable limits on the scope of an otherwise sweeping and amorphous statute, petitioner explains why section 1346 does not apply to a corporate employee whose conduct was not intended to achieve private gain at the expense of the employer. Petitioner further argues that the statute is unconstitutional unless so construed. The

Chamber agrees with petitioner on both points but submits this brief to address an issue encompassed by the first question presented, namely whether 18 U.S.C. § 1346 is a constitutional enactment.

We submit that Section 1346 fails both prongs of the void-for-vagueness inquiry. First, its unintelligible language fails to give ordinary citizens fair notice of what is prohibited. The courts of appeals have struggled to give shape, limits, and meaning to the phrase "intangible right of honest services," but their efforts ultimately amount to forbidden judicial definition of federal crimes. Second, the statute's capacious language invites arbitrary and unpredictable enforcement. As real-life examples show, the statute is a catch-all that can be used to target almost any imaginable form of dishonesty in government or (of particularly grave concern to the Chamber) business.

The prospect of prosecution under section 1346, moreover, deters legitimate business dealings. These burdens are magnified by the federal Racketeer Influenced and Corrupt Organizations Act (RICO), which converts supposed deprivations of "honest services" into predicates for severe criminal penalties as well as for treble-damages liability in civil suits. The costs and burdens associated with potentially erratic prosecutions under section 1346, as well as with the defense of civil and criminal RICO suits predicated on honest-services fraud, are inevitable byproducts of an unconstitutionally vague statute.

## ARGUMENT

### I. Section 1346 Is Unconstitutionally Vague

The Fifth Amendment guarantee of due process forbids enforcement of a statute that "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *United States* v. *Williams*, 128 S. Ct. 1830, 1845 (2008) (citing *Hill* v. *Colorado*, 530 U.S. 703, 732 (2000), and *Grayned* v. *City of Rockford*, 408 U.S. 104, 108-109 (1972)); accord *City of Chicago* v. *Morales*, 527 U.S. 41, 56, 64-66 (1999). Section 1346 is just such a statute. It "imposes insufficient constraint on prosecutors, gives insufficient guidance to judges, and affords insufficient notice to defendants." *United States* v. *Rybicki*, 354 F.3d 124, 157 (2d Cir. 2003) (en banc) (Jacobs, J., dissenting).

#### A. Section 1346 Does Not Give Fair Notice of What It Prohibits

It is a basic tenet of due process that "'fair warning should be given to the world in language *that the common world will understand*, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible *the line should be clear*.'" *United States* v. *Bass*, 404 U.S. 336, 348 (1971) (quoting *McBoyle* v. *United States*, 283 U.S. 25, 27 (1931) (Holmes, J.) (emphasis added)); cf. *Exxon Shipping Co.* v. *Baker*, 128 S. Ct. 2605, 2627 (2008) ("[E]ven Justice Holmes's 'bad man'" should be able to "look ahead with some ability to know what the stakes are in choosing one course of action or another."). If two decades of experience have taught us anything about 18 U.S.C. § 1346, it is that its language is incomprehensible, and it fails to draw any line at all, much less a clear one.

The text of the statute is opaque to an almost bizarre degree. The terms "intangible right" and "honest services" are individually indeterminate and in combination incoherent. What kind of services are we talking about? (Could an insincere sermon at Sunday religious services come within the statute?) Rendered by whom to whom? How much candor separates honest services from dishonest ones? And what does "intangible" contribute? The phrase "intangible right of honest services," moreover, is not defined in any legal code or dictionary, had no settled meaning when Congress enacted the statute, and has acquired no settled meaning since.

Small wonder, then, that the courts of appeals have by and large all acknowledged (with varying degrees of "frustrati[on]," *United States* v. *Urciuoli*, 513 F.3d 290, 300 (1st Cir. 2008)), that the text of section 1346 is "amorphous and open-ended," *United States* v. *Sorich*, 523 F.3d 702, 707 (7th Cir. 2008); accord, *e.g.*, *United States* v. *Brown*, 459 F.3d 509, 520 (5th Cir. 2006) (describing § 1346 as a "facially vague criminal statute"); *United States* v. *Weyhrauch*, 548 F.3d 1237, 1243 (9th Cir. 2008), cert. granted, 129 S. Ct. 2863 (U.S. June 29, 2009) (No. 08-1196); *United States* v. *McGeehan*, 584 F.3d 560, 567 (3d Cir. Oct. 22, 2009) ("'[T]he plain language of § 1346 provides little guidance as to the conduct it prohibits.'"). In fact, one of the few points they all seem to agree on is that the statute must mean something other than what it says.

In 2003, the en banc Second Circuit upheld the facial constitutionality of the statute by only two votes. Speaking for the four dissenters, Judge Jacobs commented that his court's troubled history with section 1346 was "telling evidence that most lawyers and judges, not to speak of ordinary laymen or prospective defendants, cannot be expected to understand the statute." *Rybicki*, 354 F.3d at 158; see also *Brown*, 459 F.3d at 534 (DeMoss, J., concurring and dissenting) (agreeing with the *Rybicki* dissenters based on "[y]ears of review of the application of § 1346 to varied facts").

Faced with unacceptably opaque language, the circuits have felt compelled "to undertake a rescue operation by fashioning something that (if enacted) would withstand a vagueness challenge." *Rybicki*, 354 F.3d at 163 (Jacobs, J.). But that well-intentioned effort has been a failure. See, *e.g.*, *Sorich* v. *United States*, 129 S. Ct. 1308, 1309 (2009) (Scalia, J., dissenting from denial of certiorari). To take perhaps the most heroic example, the en banc Second Circuit redrafted section 1346 so that "in the private sector context" it criminalizes:

> a scheme or artifice to use the mails or wires to enable an officer or employee of a private entity (or a person in a relationship that gives rise to a duty of loyalty comparable to that owed by employees to employers) purporting to act for and in the interests of his or her employer (or of the other person to whom the duty of loyalty is owed) secretly to act in his or her or the defendant's own interests instead, accompanied by a material misrepresentation made or omission of information disclosed to the employer or other person.

*Rybicki*, 354 F.3d at 146-147. Even assuming that notice problems are reduced rather than enhanced by the use of a gloss specific to the private sector, it is not at all clear that the statute written by the Second Circuit – which criminalizes a fraud scheme by anyone owing fiduciary-style duties – captures anything that the ordinary mail and wire fraud statutes (which are not limited to fiduciaries) do not. And if the former is indeed swallowed by the latter, it is even less clear why section 1346 is needed at all.

In any event, any "rescue operation" rests on a flawed premise regarding the proper role of the federal courts. "Judicial invention cannot save a statute from unconstitutional vagueness; courts should not try to fill out a statute that makes it an offense to 'intentionally cause harm to another,' or to 'stray from the straight and narrow,' or to fail to render 'honest services.'" *Rybicki*, 354 F.3d at 164 (Jacobs, J.). It is axiomatic that "[l]egislatures and not courts should define criminal activity." *Bass*, 404 U.S. at 348; accord *United States* v. *Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 490 (2001). The circuits' tortured attempts to cabin section 1346 demonstrate that the statute "imposes upon courts a role they cannot perform. . . . [T]he process takes decades and the work is performed by unelected officials without the requisite skills or expertise." *Rybicki*, 354 F.3d at 164 (Jacobs, J.); see also *Brown*, 459 F.3d at 534 (DeMoss, J.) ("Rather than address the larger constitutional problem with this statute, . . . [o]ur Court and our sister circuits end up doing precisely what most would say we lack the constitutional power to do, that is, define what constitutes criminal conduct on an ex post facto and ad hoc basis.").

### B. Section 1346 Invites Unpredictable, Arbitrary, and Discriminatory Enforcement

Section 1346 is also unconstitutionally vague for the separate but related reason that it "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Grayned* v. *City of Rockford*, 408 U.S. 104, 108-109 (1972). The statute's capacious language gives prosecutors nearly unbounded discretion, authorizing them to convert almost any imaginable ethical lapse into a federal criminal case. As Justice Scalia recently observed:

> Without some coherent limiting principle to define what 'the intangible right of honest services' is, whence it derives, and how it is violated, this expansive phrase invites abuse by headline-grabbing prosecutors in pursuit of local officials, state legislators, and corporate CEOs who engage in any manner of unappealing or ethically questionable conduct.

*Sorich*, 129 S. Ct. at 1310.

The statute's "standardless sweep," *Rybicki*, 354 F.3d at 161 (Jacobs, J.), is illustrated by the prosecutions and convictions in such cases as:

- *United States* v. *Thompson*, 484 F.3d 877 (7th Cir. 2007). A state procurement official departed from the rules governing an elaborate process for awarding a contract to a travel agency. There were no kickbacks or bribes. "The prosecution's theory was that any politically motivated departure from state administrative rules is a federal crime, when either the mails or federal funds are involved." *Id.* at 878. The court of appeals reversed the conviction immediately after hearing oral argument, *see id.* at 877-878, and Judge Easterbrook commented that this prosecution "may well induce Congress to take another look at the wisdom of enacting ambulatory criminal prohibitions. Haziness designed to avoid loopholes through which bad persons can wriggle can impose high costs on people the statute was not designed to catch." *Id.* at 884.

- *United States* v. *Brown*, 459 F.3d 509 (5th Cir. 2006). Officials at an investment bank who approved a transaction with Enron that was alleged to be in substance a loan but that Enron accounted for as a sale were convicted of conspiring to deprive Enron of *its* employees' honest services. *Id.* at 514-516. The government's use of the honest-services theory prompted the court of appeals (which reversed the convictions) to comment on "the danger we face of defining an ever-expanding and ever-evolving federal common-law crime." *Id.* at 522 n.13.

- *United States* v. *McGeehan*, 584 F.3d 560 (3d Cir. Oct. 22, 2009). Executives of a state-created, non-profit technology-development corporation were alleged to have used the corporation's funding from Pennsylvania and the U.S. Navy to pay for personal expenses and other "costs that did not have a proper business purpose." *Id.* at 563. They were convicted of depriving the corporation of their honest services by "making 'excessive

> expenditures for purposes such as lavish travel and entertainment,' subverting its fiscal controls, improperly withholding information from [the] Board of Directors, and threatening, intimidating and/or removing employees who questioned their misuse of authority," *ibid.* – in other words, for classic breaches of state-law fiduciary duties. The executives were also convicted of depriving the *Navy* of honest services that the corporation supposedly owed to the Navy pursuant to an arm's-length contract. The court of appeals reversed the latter set of convictions, observing that "[t]he federalization under the criminal law of the law of contracts and other business transactions – quintessential matters for state regulation – is a real concern," *id.* at 569.

As these examples suggest, section 1346 is malleable enough to reach nearly "any self-dealing by a corporate officer," *Sorich*, 129 S. Ct. at 1309 (Scalia, J.) or "any private employee who has an undisclosed conflict of interest or who otherwise breached their duties to their employers (as defined by those employers)," Julie R. O'Sullivan, *The Federal Criminal "Code" Is a Disgrace: Obstruction Statutes As Case Study*, 96 J. CRIM. L. & CRIMINOL. 643, 662 (2006). Section 1346 thus co-opts a multitude of state-law provisions regulating business and nonprofit organizations and transforms them into federal criminal prohibitions.

Relatedly, section 1346 typically muddies the waters for jurors facing the already daunting task of applying intricate legal instructions to complex evidence of white-collar misdealings. And this confusion is often entirely gratuitous given the existence of other, clearer federal anti-fraud provisions. Examples of cases in which section 1346 served no apparent purpose include:

- *United States* v. *Williams*, 441 F.3d 716, 724 (9th Cir. 2006). A financial advisor and estate planner used his elderly client's trust and power of attorney (along with the mails and wires) to steal hundreds of thousands of dollars from the client. *Id.* at 724. This was prosecuted as theft of the client's "honest services," *id.* at 720, but it is also straight-up – indeed, classic – mail and wire fraud involving tangible property rights. See, *e.g.*, *SEC* v. *Zandford*, 535 U.S. 813, 815-816 (2002).

- *United States* v. *Royer*, 549 F.3d 886 (2d Cir. 2008). The administrator of a web site that provided stock-trading advice (with a promise that the defendant would not trade ahead of or against his own advice) was prosecuted for a scheme in which he obtained inside information, traded on it, directed his subscribers to trade on it, and then released it to the public. The court of appeals agreed with the government that the defendant "cheated his [web] site subscribers of the honest services he owed them," *id.* at 900-901, but this rabbinic inquiry would seem to have been entirely avoidable given that the federal securities laws (under which the defendant was also charged and convicted) have long prohibited just this sort of manipulation. See, *e.g.*, *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 199 (1976).

- *Brown*. The Fifth Circuit correctly recognized that the government's approach "would expand honest-services fraud to reach all manner of accounting fraud and securities fraud, which . . . are heavily regulated under other statutes." 459 F.3d at 522 n.13.

Admittedly, many of the defendants in the cases discussed above may "have acted improperly. But '[b]ad men, like good men, are entitled to be tried and sentenced in accordance with law.'" *Sorich*, 129 S. Ct. at 1311 (Scalia, J.) (quoting *Green* v. *United States*, 365 U.S. 301, 309 (1961) (Black, J., dissenting)). Section 1346 – whose meaning prosecutors have been allowed to "make . . . up as they go along," *Rybicki*, 354 F.3d at 160 (Jacobs, J.) – fails to deliver on that guarantee.

## II. Section 1346 Imposes Intolerable Burdens on Private-Sector Dealings

Vague laws have harmful practical consequences. "Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked." *Grayned*, 408 U.S. at 109 (internal quotation marks omitted). The existence of section 1346, and the potential for prosecution under it, deters legitimate dealings and constitutes a major "threat . . . to legitimate and lawful business relationships and the negotiations necessary to the creation of such relationships." *Brown*, 459 F.3d at 535 (DeMoss, J.).

These burdens are compounded by the fact that every supposed deprivation of honest services is a potential predicate offense under the Racketeer Influenced and Corrupt Organizations Act (RICO). (Section 1346 says that 18 U.S.C. §§ 1341 and 1343 cover schemes to interfere with the intangible right of honest services, and under RICO, every act indictable under sections 1341 and 1343 can form part of an actionable "pattern of racketeering activity," 18 U.S.C. §§ 1961(1), (5), 1962 – itself a troublingly vague concept, as four Justices noted in *H.J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U.S. 229, 255-256 (1989) (Scalia, J., concurring in the judgment)). Indeed, this Court has already cautioned against broadening the reach of the mail-fraud statute precisely because of its potential to generate draconian penalties under the umbrella of RICO. *Cleveland* v. *United States*, 531 U.S. 12, 25 (2000). The combination of RICO and "honest-services fraud" exemplifies the alchemy of amorphousness through which modern federal prosecutors pursue nebulous but far-reaching theories of liability. See, *e.g.*, *United States* v. *Gray*, 521 F.3d 514, 521 (6th Cir. 2008) (racketeering-conspiracy convictions apparently based partly on honest-services fraud); *United States* v. *Jones*, 2009 WL 2972934, at *1 (E.D. Ky. Sept. 11, 2009) (RICO prosecution based partly on honest-services fraud); *United States* v. *Presgraves*, __ F. Supp. 2d __, 2009 WL 2753190, at *2 (W.D. Va. Aug. 25, 2009) (same).

This mischief, moreover, extends to *civil* RICO suits. "[T]here is no such thing as prosecutorial discretion to limit the use of civil RICO by plaintiffs' attorneys." William H. Rehnquist, *Remarks of the Chief Justice*, 21 ST. MARY'S L.J. 5, 10 (1989). Sure enough, plaintiffs' lawyers have figured out how to use section 1346 in conjunction with RICO to threaten businesses with treble damages and attorneys' fees under 18 U.S.C. § 1964(c). In one recent case, for example, the plaintiff alleged that one of its employees and its outside licensing agent had double-dealt in negotiations with other parties over the plaintiff's intellectual-property rights. *World Wide Wrestling Entm't, Inc.* v. *Jakks Pac., Inc.*, 530 F. Supp. 2d 486, 492-494 (S.D.N.Y. 2007). Rather than limit itself to traditional causes of action in tort, the plaintiff asserted civil RICO claims. The court concluded that the complaint sufficiently alleged a "pattern of racketeering activity" insofar as the employee's and outside agent's undisclosed dealings had deprived the plaintiff of its intangible right to their honest services in violation of section 1346. *Id.* at 495, 498, 507, 514.[2] Allegations like these – which are by no means unique, see, *e.g.*, *TransFirst Holdings, Inc.* v. *Phillips*, 2007 WL 631276, at *12 (N.D. Tex. Mar. 1, 2007); *Hexagon Packaging Corp.* v. *Manny Gutterman & Assocs.*, 1997 WL 323501, at *10 (N.D. Ill. June 9, 1997) – only magnify the unwarranted burdens that section 1346 imposes on American business.

## CONCLUSION

The judgment of the court of appeals should be reversed.

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[2] The court dismissed the RICO claims for other reasons. See *id.* at 524, 530

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# AMICUS
# CURIAE
# BRIEF

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No. 08-1394

# In The Supreme Court of the United States

◆

JEFFREY K. SKILLING,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

◆

**On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit**

◆

## AMICUS CURIAE BRIEF OF NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITIONER AND URGING REVERSAL

◆

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## QUESTIONS PRESENTED

1. Whether the federal "honest services" fraud statute, 18 U.S.C. § 1346, requires the government to prove that the defendant's conduct was intended to achieve "private gain" rather than to advance the employer's interests, and, if not, whether § 1346 is unconstitutionally vague.

2. When a presumption of jury prejudice arises because of the widespread community impact of the defendant's alleged conduct and massive, inflammatory pretrial publicity, whether the government may rebut the presumption of prejudice, and, if so, whether the government must prove beyond a reasonable doubt that no juror was actually prejudiced.

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## INTEREST OF AMICUS CURIAE[1]

Amicus National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct.

NACDL was founded in 1958. It has a nationwide membership of 11,000 and an affiliate membership of almost 40,000. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. The American Bar Association recognizes NACDL as an affiliated organization and awards it full representation in its House of delegates.

NACDL files numerous amicus briefs each year in this Court and other courts, seeking to provide amicus assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole. Of particular significance here, NACDL has submitted amicus briefs to this Court in *Sorich v. United States*, 129 S. Ct. 1308 (2009) ("NACDL *Sorich* Amicus"), *Black v. United States*, No. 08-876 ("NACDL *Black* Amicus"), and *Weyhrauch v. United*

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[1] Under Sup. Ct. R. 37.6, counsel for amicus curiae state that no counsel for a party authored this brief in whole or in part, and that no person other than amicus, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. Letters of consent to the filing of this brief have been lodged with the Clerk of the Court under Rule 37.2(a).

*States*, 08-1196 ("NACDL *Weyhrauch* Amicus"), arguing that the statute at issue in this case (18 U.S.C. § 1346) is void for vagueness.

## SUMMARY OF ARGUMENT

1. The honest services statute is void for vagueness on its face. Neither the "vague and amorphous" statutory language nor the "jumble of disparate cases" construing it, *United States v. Brown*, 459 F.3d 509, 523 (5th Cir. 2006), *cert. denied*, 550 U.S. 933 (2007), provides fair warning to ordinary people of the prohibited conduct or prevents arbitrary enforcement by federal prosecutors. The "core" principles that the government now purports to find in the statute have no basis in its text or legislative history and amount to little more than an invitation to judicial legislation.

2. Following the collapse of Enron, Skilling faced a wave of community hostility and inflammatory publicity equaled only in the Oklahoma City bombing case. The court of appeals correctly found that the extraordinary vitriol directed toward Skilling created a presumption of juror prejudice. But the court made two critical errors: it held, contrary to this Court's decisions, that the presumption of prejudice could be rebutted through voir dire, and it further found that the district court's perfunctory, five-hour voir dire overcame the presumption and produced a fair jury. Those rulings ignore the rationale for the presumption of juror prejudice, obliterate the distinction between presumed and actual prejudice, and, in combination, eviscerate the Sixth Amendment right to "indifferent"

jurors. *Sheppard v. Maxwell*, 384 U.S. 333, 362 (1966).

## ARGUMENT

### I. THE HONEST SERVICES STATUTE IS VOID FOR VAGUENESS.

NACDL has argued in its *Sorich*, *Black*, and *Weyhrauch* amicus briefs that 18 U.S.C. § 1346 must be held void for vagueness, because the statute fails to "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983); *see* NACDL *Sorich* Amicus 13-23; NACDL *Black* Amicus 6-16; NACDL *Weyhrauch* Amicus 5-15.[2]

NACDL urges again the position stated in its prior briefs and argued by petitioner Skilling: the honest services statute is vague, both for lack of fair notice and for encouraging arbitrary enforcement by federal prosecutors.[3] We write further to address issues that emerged during the oral arguments in *Black* and *Weyhrauch*.

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[2] NACDL argues as well that § 1346 unconstitutionally intrudes on state sovereignty. NACDL *Black* Amicus 16-24; NACDL *Weyhrauch* Amicus 15-23. The federalism concerns in *Black* and *Weyhrauch* have equal force here.

[3] Two arguably distinct questions arise here. First, did the judicial interpretations of § 1346, *as they existed at the time of Skilling's conduct*, provide fair notice and prevent arbitrary enforcement? That question must be answered without the benefit of any clarity that this Court's decisions in *Black*, *Weyhrauch*, and this case might provide. Second, can this Court properly interpret § 1346 *now* to provide fair notice to future defendants and to prevent future arbitrary enforcement? Because NACDL contends that § 1346 is facially vague, *see infra* at 13-15, we focus on the second question.

1. Under the doctrine of constitutional avoidance, the Court must determine whether it can construe § 1346 to provide the constitutionally sufficient definiteness that Congress failed to include in the sparse statutory text. The answer is no. This Court has held that "[l]egislatures and not courts should define criminal activity." *United States v. Bass*, 404 U.S. 336, 348 (1971).[4] The process of limiting the broad text of § 1346 through adjudication amounts to little more than forbidden judicial legislation. As Judge Jacobs has observed, "[T]he splintering among the circuits demonstrates [that] section 1346 effectively imposes upon courts a role they cannot perform. When courts undertake to engage in legislative drafting, the process takes decades and the work is performed by unelected officials without the requisite skills or expertise; and as the statutory meaning is invented and accreted, prosecutors are unconstrained and people go to jail for inchoate offenses." *United States v. Rybicki*, 354 F.3d 124, 164 (2d at Cir. 2003) (en banc) (Jacobs, J., dissenting); *see, e.g., United States v. Brumley*, 116 F.3d 728, 736 (5th Cir. 1997) (en banc) (Jolly, J., dissenting) (accusing majority of "assum[ing] a role somewhere between a philosopher king and a legislator to create its own definitions of the terms of a criminal statute").

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[4] The Court has cited approvingly the description of this rule as the "principle of legality," which "implement[s] separation of powers, provide[s] notice, and prevent[s] abuses of official discretion." *United States v. Lanier*, 520 U.S. 259, 265 n.5 (1997).

Any effort by this Court to infuse meaning into § 1346 collides as well with the principle that "there is no federal common law of crimes." *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 181 (1994); *see, e.g., United States v. Lanier*, 520 U.S. 259, 267 n.6 (1997); *United States v. Hudson*, 11 U.S. (7 Cranch) 32, 33 (1812). As the Court has made clear, "[F]ederal crimes are defined by statute rather than by common law." *United States v. Oakland Cannabis Buyer's Cooperative*, 532 U.S. 483, 490 (2001). Leaving courts to devise limiting principles for § 1346 unguided by the statutory text (or even by any meaningful legislative history) cannot be distinguished from common law crime definition. *See, e.g., Sorich*, 129 S. Ct. at 1310 ("There is a serious argument that § 1346 is nothing more than an invitation for federal courts to develop a common-law crime of unethical conduct.") (Scalia, J., dissenting from denial of certiorari).

2. The government insists that no judicial legislation is necessary; the Court need merely implement Congress' asserted intent to restore the "core" and "prototypical" pre-*McNally* principles that the cases established. *E.g.*, *Black* Tr. 30-32, 43, 46, 48; *Weyhrauch* Tr. 40, 42, 52. But as petitioner convincingly demonstrates, there was no consensus about the scope of honest services fraud before this Court briefly eliminated that theory in *McNally*. Brief for Petitioner ["Pet. Br."] 39-42. What the Fifth Circuit aptly termed "a jumble of disparate cases," *Brown*, 459 F.3d at 523, cannot provide the necessary fair notice.

Nor have the principles that supposedly may be divined from the pre-*McNally* cases prevented the government from arbitrary enforcement. To the contrary, the government has regularly taken positions in honest services prosecutions far beyond the core principles that it now purports to find in those cases. To cite a recent example: The government asserted at oral argument in *Black* and *Weyhrauch* that the honest services offense must involve a personal financial interest of the defendant, *Black* Tr. 31-33, 43-45; *Weyhrauch* Tr. 55; not even the financial interest of an adult son or other close relative falls within the statute, *Black* Tr. 31-33, 43-45. Yet earlier this year in *Sorich* the government successfully defended an honest services conviction where neither the defendant nor any of his alleged co-conspirators had any personal financial interest; they simply administered a patronage system that favored supporters of the incumbent city administration. *See Sorich*, 129 S. Ct. at 1311 (Scalia, J., dissenting from denial of certiorari); *United States v. Sorich*, 523 F.3d 702, 709 (7th Cir. 2008). Sorich is serving a prison sentence today based on a conviction that the government now concedes exceeded the scope of the honest services statute. Petitioner's brief (at 43-44) cites other examples of honest services prosecutions inconsistent with the interpretation of § 1346 that the government now espouses.

At oral argument in *Weyhrauch*, the government observed that the post-*McNally* honest services cases "evolved . . . without this Court's intervention and guidance to provide clarification," *Weyhrauch* Tr. 48--as if this Court had somehow dropped the ball.

But in case after case, including *Sorich*, *Black*, *Weyhrauch*, *Skilling*, and countless others over the last two decades,[5] the government vigorously opposed petitioners' efforts to obtain this Court's "guidance" and "clarification" concerning § 1346. The government thus preserved the opportunity for a generation of "headline-grabbing prosecutors" to use the statute "in pursuit of local officials, state legislators, and corporate CEOs who engage in any manner of unappealing or ethically questionable conduct." *Sorich*, 129 S. Ct. at 1310 (Scalia, J., dissenting from denial of certiorari).

In the twenty-one years since Congress enacted § 1346, federal prosecutors have made the most of that opportunity, without the slightest regard for the "core" principles that the government now endorses in an effort to save the statute. The government conceded at the *Weyhrauch* argument that "the core understanding of what honest services is may have been strayed from in some of those [post-*McNally*] cases, and some courts of appeals affirmed it." *Weyhrauch* Tr. 48-49. But it was *the government* that urged district courts to "stray[] from" what it now calls the "core understanding" of honest services fraud, and it was *the government* that urged the courts of appeals to affirm those concededly erroneous convictions. One can confidently predict that if this Court accepts the government's invitation to engraft its "core understanding" of § 1346 onto the vague statutory language, federal prosecutors will turn at once to expanding that "understanding" until the statute again encompasses any conduct that a particular prosecutor deems "unappealing or ethically questionable." Only clear statutory language can perform the constitutionally required function of preventing arbitrary enforcement of § 1346.

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[5] *See, e.g.*, *Segal v. United States*, 128 S. Ct. 2069 (2008); *Colino v. United States*, 128 S. Ct. 1733 (2008); *Rybicki v. United States*, 543 U.S. 809 (2004); *Rise v. United States*, 541 U.S. 1072 (2004); *Panarella v. United States*, 537 U.S. 819 (2002).

3. Even if this Court can now divine a narrow core of covered conduct from the pre-*McNally* cases--bribery and kickbacks, for example, as Professor Alschuler proposes[6]--it should not substitute the elements of those offenses for the 28 words of § 1346. If Congress wanted to criminalize bribery and kickbacks that might otherwise go unpunished under federal law,[7] it should have said so clearly, as this Court encouraged it to do in *McNally*. The legislature cannot "set a net large enough to catch all possible offenders," and then leave it to this Court to "step inside and say who could be rightfully detained, and who should be set at large." *United States v. Reese*, 92 U.S. 214, 221 (1876).

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[6] Brief of Albert W. Alschuler as *Amicus Curiae* in Support of Neither Party, *Weyhrauch v. United States*, No. 08-1196 ["Alschuler Br."]. Justice Breyer referred to this during the *Black* argument as "Alschuler alternative A." *Black* Tr. 34. Although Professor Alschuler addresses a formulation of honest services that includes a limited form of self-dealing--what Justice Breyer called "Alschuler alternative B," *id.*--he makes clear that, in his view, § 1346 extends only to bribery and kickbacks. Alschuler Br. 28-33.

[7] The federal criminal code already reaches many forms of bribery and kickbacks. *See, e.g.*, 18 U.S.C. § 1952 (prohibiting interstate or foreign travel in aid of various offenses, including bribery and extortion punishable under state or federal law); *id.* § 666 (prohibiting bribery of officials of state and local entities that receive more than $10,000 per year in federal funds); *id.* § 201 (prohibiting bribery of federal officials).

It stretches the notion of statutory interpretation past the breaking point for a court (a) to discern from the amorphous language and minimal legislative history of § 1346 that Congress meant to reinstate pre-*McNally* honest services cases; (b) to review those cases and discard the many that are in conflict or otherwise do not involve the supposed "core" prohibited conduct; (c) to examine the cases that remain and determine that they involve bribery and kickbacks; (d) to hold, based on those "core" cases, that the "intangible right of honest services" means something like "the right to services untainted by bribes or kickbacks"; and then, presumably, (e) to borrow the elements of bribery and kickback offenses from statutes that expressly prohibit that conduct (18 U.S.C. §§ 201 and 666, for example), to establish precisely what the government must prove under § 1346 to obtain a conviction. This Court has never endorsed such an extravagant concept of statutory interpretation, and it should not do so here.

4. At argument in *Weyhrauch*, the government cited *United States v. Kozminski*, 487 U.S. 931 (1988), as an analogous instance of statutory interpretation. *Weyhrauch* Tr. 44. But *Kozminski* provides no support for the judicial legislation the government asks the Court to perform here. That case involved charges under 18 U.S.C. §§ 241 and 1584 that the defendants had held persons in "involuntary servitude." The Court rejected the government's proposal to embark on "the inherently legislative task of defining 'involuntary servitude' through case-by-case adjudication." 487 U.S. at 951. Instead, it applied the rule of lenity, *id.* at 952,

limiting the definition for purposes of both statutes to that found in "the actual holdings" of "every case in which this Court has found a condition of involuntary servitude," *id*. at 942-43.

Addressing § 241 (which prohibits conspiracies to interfere with "the free exercise or enjoyment of any right or privilege secured to [a person] by the Constitution or laws of the United States"), the Court observed:

> Congress intended the statute to incorporate by reference a large body of potentially evolving federal law. This Court recognized [in prior cases], however, that a statute prescribing criminal punishment must be interpreted in a manner that provides a definite standard of guilt. The Court resolved the tension between these two propositions by construing § 241 to prohibit only *intentional interference with rights made specific either by the express terms of the Federal Constitution or laws or by decisions interpreting them*.

487 U.S. at 941 (emphasis added). Applying this "made specific" principle, *Kozminski* held that the government's theory of culpability--that "involuntary servitude" could exist based on purely psychological coercion--exceeded the scope of § 241. *See id*.. at 944. The *Kozminski* Court thus drew an explicit line between allowing judges and juries to "apply substantive standards established by Congress" and

"tolerat[ing] the arbitrariness and unfairness of a legal system in which the judges would develop the standards for imposing criminal punishment on a case-by-case basis." *Id.* at 951. The government's position with respect to § 1346 places it firmly on the wrong side of that line.

As the later decision in *Lanier* also makes clear, nothing in this Court's rulings on the scope of criminal sanctions under the civil rights statutes supports the interpretive task that the government asks it to undertake here. Even where, as in § 241, Congress expressly incorporates a body of "potentially evolving federal law" into a criminal statute, the statute cannot be enforced unless the incorporated requirements have been "'made specific' by the text" of those separately defined provisions or by "settled interpretations" of them. *Lanier*, 520 U.S. at 267. Indeed, the same public actors vulnerable to civil rights prosecutions may not even be held *civilly* liable unless the constitutional right at issue is already "clearly established." *Id.* at 270-71.

In stark contrast, there is no separate constitutional or statutory "intangible right of honest services," the contours of which must be "made specific" or "clearly established" before a federal prosecutor charges a violation of § 1346. Instead, the meaning of the "right" must be traced, if at all, to the assertedly incorporated law from the pre-*McNally* era, which is nothing more than a "jumble of disparate cases" from the courts of appeals, many in conflict with each other, from which the government asks this Court to extract "core" principles. Those cases "leave the law insufficiently certain" to constitute "warning [that] is fair enough." *Lanier*, 520 U.S. at 269.

*Kozminski*'s refusal to read § 1584 broadly is also telling. The Court found that the government's proposed reading "would appear to criminalize a broad range of day-to-day activity." 487 U.S. at 949. It declared that the government's interpretation "would delegate to prosecutors and juries the inherently legislative task of determining what type of coercive activities are so morally reprehensible that they should be punished as crimes"; that it would "subject individuals to the risk of arbitrary or discriminatory prosecution and conviction"; and that it would "fail to provide fair notice to ordinary people who are required to conform their conduct to the law." *Id.* at 949-50. Those objections to the government's interpretation of § 1584 apply with equal force to its approach to § 1346.

*Kozminski* rejected the government's argument--identical to the argument it makes in *Black* and *Weyhrauch*[8]--that the specific intent requirement of § 1584 cured any vagueness problem. The Court declared that "in light of the Government's failure to give any objective content to its construction of the phrase 'involuntary servitude,' this specific intent requirement amounts to little more than an assurance that the defendant sought to do an unknowable something." *Id.* at 950 (quotation omitted). Similarly here, the "intent to defraud" element that the government trumpets as a cure to the vagueness in § 1346 provides no assurance that the defendant has fair notice of what the honest services statute prohibits. *Cf. United States v. Kincaid-Chauncey*, 556 F.3d 923, 950 (9th Cir.) (Berzon, J., concurring) ("[R]equiring a 'specific intent to defraud' cannot always function as a sufficient limiting principle--one that would effectively prevent such political misuse [of § 1346 by prosecutors]--in the absence of a well-specified and commonly understood notion of when non-disclosure amounts to 'fraud.'"), *cert. denied*, 2009 U.S. LEXIS 8812 (U.S. Dec. 7, 2009).

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[8] *Black* Tr. 51; *Weyhrauch* Tr. 33-37, 51.

5. The Court should hold § 1346 void for vagueness on its face, rather than merely as applied to Skilling (and Black and Weyhrauch). Certainly the statute is vague as to the conduct of those petitioners; but § 1346, like the statute at issue in *Kolender*, is impermissibly vague in *all* of its applications and thus should be struck down as facially invalid. *See Rybicki*, 354 F.3d at 155-65 (Jacobs, J., dissenting); *see also Brown*, 459 F.3d at 534-35 (DeMoss, J., concurring). The amorphous statutory language, the sparse legislative history, and the conflicting cases interpreting § 1346 fail to provide fair notice to anyone, regardless of the conduct at issue.

Lawyers and judges may be able to discern, through the elaborate interpretive process described above, that Congress intended the statute to apply to bribes and kickbacks. But § 1346 does not "provide the kind of notice that will enable *ordinary people* to understand what conduct it prohibits." *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999) (plurality opinion) (emphasis added). And even if the Court were to find that the honest services statute *does* give fair notice as to some narrow category of conduct such as bribes and kickbacks, the statute in all cases fails adequately to restrain the discretion of federal prosecutors.

This point is best shown through an example that Justice Breyer offered in his concurrence in *Morales* and Justice Scalia raised at oral argument in *Weyhrauch*: Suppose a person who commits an unjustified homicide is prosecuted under a statute that says, "It is a crime to do wrong." *Id*. at 71 (Breyer, J., concurring); *Weyhrauch* Tr. 45.[9] The person surely had fair warning before he acted that his murderous conduct was "wrong" and thus fell within the scope of the statute. Nevertheless, the statute is vague on its face, "not because it provides insufficient notice, but because it does not provide sufficient minimal standards to guide law enforcement officers." *Morales*, 527 U.S. at 72 (Breyer, J., concurring) (quotation omitted).

It therefore makes no difference whether, under the "fair notice" prong of vagueness analysis, a person who takes bribes knows he is violating the law. Section 1346 is still impermissibly vague because it gives prosecutors almost unlimited discretion to determine what undesirable conduct they will pursue. As Justice Breyer explained, the honest services statute "is unconstitutional . . . because the [prosecutor] enjoys too much discretion in *every* case. And if every application of the [statute] represents an exercise of unlimited discretion, then the ordinance *is* invalid in all its applications." *Id.* at 71 (emphasis in original).

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[9] *See also United States v. L. Cohen Grocery Co.*, 255 U.S. 81, 89 (1921) (offering as example of vague statute one that "merely penalized all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court and jury").

6. In NACDL's view, the Court's analysis of § 1346 should end with a finding that the statute is unconstitutionally vague on its face. If the Court determines that the statute can survive the vagueness challenge, we agree with petitioner and Professor Alschuler that it must be limited to bribes and kickbacks. Pet Br. 48-52; Alschuler Br. 28-32. But if the Court goes on to determine what conduct beyond bribes and kickbacks amounts to a deprivation of the "right to honest services" in the corporate context, we urge it to consider a further point: the circumstances under which an employee's knowledge and actions should be imputed to a corporation when the corporation (Enron, in Skilling's case) is the alleged victim of the employee's conduct.

Courts have held for at least a century that a corporation may be criminally liable for an employee's acts when "the act is done for the benefit of the [corporation], while the [employee] is acting within the scope of his employment in the business of the [corporation]." *New York Central and Hudson River Railroad Co. v. United States*, 212 U.S. 481, 494 (1909). Under *New York Central*, courts hold a corporation responsible for the conduct of an employee within the scope of his employment if he acts even *in part* for the benefit of the corporation; only when the employee acts *solely* for his own benefit is the corporation excluded from criminal

liability. *See, e.g., United States v. Sun-Diamond Growers of California*, 138 F.3d 961, 970 (D.C. Cir. 1998), *aff'd on other grounds*, 526 U.S. 398 (1999); *United States v. Automated Medical Laboratories,* 770 F.2d 399, 407 (4th Cir. 1985).

This imputation rule should apply equally when the corporation is the alleged victim of the employee's criminal conduct. An employee should not be criminally liable for allegedly depriving the corporation of his honest services when he acts within the scope of his employment and *at least in part* for the benefit of the corporation. Only when an employee acts *solely* for his own benefit should he be subject to criminal liability for defrauding the corporation of his honest services.

Permitting imputation of an employee's knowledge and acts when the corporation is the alleged perpetrator and not when the corporation is the alleged victim creates an illogical disparity. It makes no sense for the corporation to be both perpetrator and victim in the eyes of the law based on exactly the same employee conduct. In the context of this case, it makes no sense to permit the government to say on one hand that Skilling--who indisputably acted within the scope of his employment and for the benefit of Enron--violated his duty of honest services to the company, while at the same time permitting private plaintiffs and others to hold Enron liable based on Skilling's knowledge and actions. A corporation may be a fictional person (at least for some purposes), but it is only *one* such person; it cannot logically be *two* fictional persons, one with the employee's knowledge and the other without.[10]

The *Rybicki* gloss on § 1346--which, to be clear, exceeds the proper role of the federal courts by assuming Congress' role to "make" laws--comes close to adopting the imputation rule we advocate. *Rybicki* holds that, in cases involving private individuals, the honest services statute requires proof of a "scheme or artifice to use the mails or wires to enable an officer or employee of a private entity . . . purporting to act for and in the interests of his or her employer . . . secretly to act in his or her or the defendant's own interests *instead*, accompanied by a material misrepresentation made or omission of information disclosed to the employer or other person." 354 F.3d at 141-42 (emphasis added).[11] As the word "instead" suggests, the *Rybicki* standard would be violated only when the employee acts solely in his or her own interest. To make this point perfectly clear, if the Court were inclined to adopt the *Rybicki* codification it should add the word "solely" before "in his or her or the defendant's own interests."

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[10] The one case to address the imputation question squarely in the context of an honest services prosecution held that the imputation rules are not the same "on both the perpetrator and victim sides." *Sun-Diamond Growers*, 138 F.3d at 971. The court rested this conclusion on the view (unsupported by relevant legal authority or empirical evidence) that imputation is a "legal fiction" which may be adjusted for policy reasons; that a broad imputation rule on the perpetrator side "encourage[s] monitoring"; and that "it is not at all clear that imputation on the other side of the equation would be useful in eliciting additional caution on the part of would-be fraud victims." *Id.* These ipse dixits do not justify the illogic of treating a corporation as both victim and perpetrator based on the same conduct of the same employee.

[11] The Second Circuit added that "in self-dealing cases, unlike bribery or kickback cases, there may also be a requirement of proof that the conflict caused, or at least was capable of causing, some detriment." 354 F.3d at 142; *see id.* at 141 (in the self-dealing context, "the defendant's behavior must thus cause, or at least be capable of causing, some detriment--perhaps some economic or pecuniary detriment--to the employer").

## II. THE PRESUMPTION OF PREJUDICE THAT ARISES FROM INTENSE COMMUNITY HOSTILITY AND PERVASIVE ADVERSE PUBLICITY CANNOT BE REBUTTED THROUGH VOIR DIRE.

The court of appeals correctly held that the massive harm to Houstonians from Enron's collapse and the intense, inflammatory publicity that followed required a presumption of juror prejudice. But the court then went badly astray; it held that the presumption could be rebutted through voir dire, and it found that the perfunctory voir dire that the district court conducted here--which the court of appeals bizarrely described as "exemplary" and "thorough," Pet. App. 62a--sufficed to ensure an unbiased jury. Those rulings are indefensible.

1. The court of appeals' decision properly acknowledges the extraordinary hostility that Houston and its citizens displayed toward Skilling and his codefendant, Kenneth Lay. Pet. App. 56a-59a. Skilling's brief provides further detail. Pet. Br. 4-18. Other than Oklahoma City following the attack on the Murrah Federal Building, there has likely never been a community that so strongly and uniformly viewed itself as the victim of the offenses to be tried. And, other than Oklahoma City, there has

likely never been a community that so strongly and uniformly *hated* the defendants. Here, as in the Oklahoma City bombing case, the effects of Enron's bankruptcy on the Houston community "are so profound and pervasive that no detailed discussion of the evidence is necessary." *United States v. McVeigh*, 918 F. Supp. 1467, 1470 (W.D. Okla. 1996).

This Court has made clear that in such extraordinary (and rare) cases, even the most meticulous jury selection cannot ensure an unbiased panel. The jurors' assertions that they can put aside their feelings and beliefs and perform their duty fairly--no matter how earnest--simply "should not be believed." *Mu'Min v. Virginia*, 500 U.S. 415, 429 (1991); *see, e.g., Sheppard v. Maxwell*, 384 U.S. 333, 362-63 (1966); *Rideau v. Louisiana*, 373 U.S. 723, 727 (1963). As this Court observed, "No doubt each juror was sincere when he said he would be fair and impartial . . . but the psychological impact of requiring such a declaration before one's peers is often its father." *Irvin v. Dowd*, 366 U.S. 717, 728 (1961).

Here, as in the Oklahoma City case, the Constitution and Fed. R. Crim. P. 21 required the district court to transfer venue and then conduct a rigorous voir dire of prospective jurors from the new venue. Given the sheer loathing for Skilling and Lay that the collapse of Enron engendered in Houston, only with both of those protections--change of venue and thorough voir dire--could there be any confidence that the defendants would face the unbiased jury to which the Constitution entitled them.

The district court provided *neither* protection. Faced with overwhelming evidence that Houston was suffused with hostility toward Skilling and Lay, the court cursorily rejected Skilling's motions to transfer venue. The court then declared that voir dire would last no more than a day. It insisted on conducting voir dire itself, with only the most perfunctory follow-up questioning by counsel. It ignored unmistakable indications of bias in the potential jurors' questionnaires. It persistently asked leading questions of potential jurors--questions (*e.g.*, "can you nevertheless be fair and impartial?") designed to mask, rather than expose, bias. It signaled to hesitant jurors the answers that it sought, affirming the jurors' ability to be fair and impartial. Even when grounds to strike potential jurors for cause became apparent, the court often denied challenges. And the court granted Skilling and Lay a meager two additional peremptory challenges (for a total of twelve combined challenges), and then denied repeated requests for additional peremptories. All told, the district court imposed a voir dire process that took only five hours and screened forty-six jurors--eight more than the minimum required. *See* Pet. Br. 7-12 (describing voir dire and jury selection).

The district court's conduct of jury selection--from the denial of the motions to transfer venue without a hearing to the brief and superficial voir dire to the rulings on challenges for cause to the denial of additional peremptory challenges--represents a shocking triumph of expediency over fairness. The Fifth Circuit's conclusion that the district court's perfunctory examination of potential jurors suffices to rebut the presumption of prejudice, if allowed to stand, spells the end of this Court's recognition, in cases such as *Rideau* and *Sheppard*, that community hostility and pervasive adverse publicity render voir dire ineffective in rooting out bias.

2. The notion that the presumption of juror prejudice can be rebutted through voir dire not only flies in the face of this Court's prior rulings; it is utterly illogical. The Court recognizes the presumption of prejudice because, in those rare circumstances where hostile publicity engulfs a community, or the community views itself as a victim of the alleged crime, jurors' assurances of impartiality are unreliable. *See, e.g., Mu'Min*, 500 U.S. at 429; *Patton v. Yount*, 467 U.S. 1025, 1031 (1984); *Irvin*, 366 U.S. at 727-28. To hold that such assurances can rebut the presumption of juror prejudice is to reject the underlying premise of the presumption itself--that voir dire is categorically unreliable under the circumstances.

Treating voir dire as categorically unreliable in presumed prejudice cases does not rest on mistrust of potential jurors; it simply acknowledges psychological reality. Pet. Br. 30-32. A similar recognition underlies cases holding that, in rare circumstances, jurors cannot be relied upon to follow the trial court's instructions to disregard certain evidence, no matter how conscientiously they try. *See, e.g., Gray v. Maryland*, 523 U.S. 185, 190 (1998) ("'[T]here are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored.'") (quoting *Bruton v. United States*, 391 U.S. 123, 135 (1968)); *Jackson v. Denno*, 378 U.S. 368, 388-89 (1964) (jury cannot be relied on to follow instruction to disregard confession it has found to be involuntary; Court asks, "If it finds the confession involuntary, does the jury--indeed can it--disregard the confession in accordance with its instructions?"). Just as jurors cannot reliably cabin or ignore particularly inflammatory evidence, they cannot reliably recognize and acknowledge the potential impact of particularly inflammatory publicity or community sentiment. "The influence that lurks in an opinion once formed is so persistent that it unconsciously fights detachment from the mental processes of the average man." *Irvin*, 366 U.S. at 727.

3. As a practical matter, allowing the presumption of juror prejudice to be rebutted through voir dire under the court of appeals' standard collapses the important distinction between presumed and actual juror prejudice. The only difference between a *rebuttable presumption* of prejudice and *actual* prejudice is the burden of proof; the government has the burden of rebutting the presumption, while the defendant has the burden of establishing that jurors are actually prejudiced. But under the court of appeals' analysis, this distinction makes no practical difference. In the Fifth Circuit's view, a juror's assurance that he can be impartial--even an uncertain assurance in response to leading questions from the court after prior admissions of bias or hostility--suffices to rebut the *presumption* of prejudice just as surely as it defeats a defendant's

effort to show *actual* prejudice. A presumption so readily rebutted is meaningless.[12]

4. If the presumption of prejudice can be rebutted under the court of appeals' standard, then it is a dead letter. Future courts faced with overwhelming community hostility toward a defendant will compare their circumstances to these, find them less egregious, and conclude without further analysis that perfunctory voir dire is sufficient to ensure a jury that meets constitutional standards. This case thus represents more than an injustice perpetrated upon a single defendant; it presents a direct threat to the sanctity of the jury trial right enshrined in the Sixth Amendment.

If the constitutional right to impartial jurors means anything, it means that Skilling should not have been tried in Houston before jurors selected in less than a day with only cursory examination, a number of whom had unequivocally expressed harshly negative opinions of the defendants on their questionnaires and in voir dire. We thus urge the Court to reaffirm that once a presumption of prejudice arises from extreme community hostility or pervasive hostile publicity, it cannot be rebutted through voir dire.

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[12] The rebuttal standard that petitioner proposes (if the per se rule he principally advances does not apply)--the traditional "harmless beyond a reasonable doubt" standard that this Court applies to constitutional error, Pet. Br. 34-38--preserves the distinction between presumed and actual prejudice. But even that standard does not adequately account for the psychological reality that under extraordinary circumstances, jurors cannot reliably recognize and disclose biases through voir dire.

## CONCLUSION

The conviction should be reversed.

Respectfully submitted,

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# AMICUS
# CURIAE
# BRIEF

Supreme Court, U.S.
FILED

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### In the
# Supreme Court of the United States

◆

JEFFREY K. SKILLING,

*Petitioner,*

v.

UNITED STATES
OF AMERICA,

*Respondent.*

◆

**On Writ of Certiorari**
**to the United States Court of Appeals**
**for the Fifth Circuit**

◆

# BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND CATO INSTITUTE IN SUPPORT OF NEITHER PARTY

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# QUESTIONS PRESENTED

1. Whether the federal "honest services" fraud statute, 18 U.S.C. § 1346, requires the government to prove that the Defendant's conduct was intended to achieve "private gain" rather than to advance the employer's interests, and, if not, whether Section 1346 is unconstitutionally vague.

2. When a presumption of jury prejudice arises because of the widespread community impact of the Defendant's alleged conduct and massive, inflammatory pretrial publicity, whether the government may rebut the presumption of prejudice, and, if so, whether the government must prove beyond a reasonable doubt that no juror was actually prejudiced.

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# IDENTITY AND INTEREST OF AMICI CURIAE

Pursuant to Supreme Court Rule 37.3(a), Pacific Legal Foundation (PLF) and Cato Institute respectfully submit this brief amicus curiae in support of neither party.[1]

PLF was founded more than 35 years ago and is widely recognized as the largest and most experienced nonprofit legal foundation of its kind. PLF litigates matters affecting the public interest at all levels of state and federal courts and represents the views of thousands of supporters nationwide. Among other things, PLF's Free Enterprise Project defends the constitutional right of all individuals to earn a living by pursuing their chosen occupations without unreasonable government interference. PLF has appeared in state and federal courts across the country in cases involving the vagueness of statutory or common law restrictions on business, such as "public nuisance" claims brought against businesses to recover damages for alleged pollution. *See In re Lead Paint Litig.*, 886 A.2d 662 (N.J. 2005), *State v. Lead Indus. Ass'n, Inc.*, 951 A.2d 428, 464 (R.I. 2008), *People v. General Motors Corp.*, No. C06-05755 MJJ, 2007 WL 2726871 (N.D. Cal. Sept. 17, 2007). PLF believes its public policy experience will assist this Court in considering the merits of this case.

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[1] Pursuant to this Court's Rule 37.3(a), all parties have consented to the filing of this brief. Letters evidencing such consent have been filed with the Clerk of the Court.

Pursuant to Rule 37.6, Amici affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici, their members, or their counsel made a monetary contribution to its preparation or submission.

The Cato Institute was established in 1977 as a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Center for Constitutional Studies was established in 1989 to help restore the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, publishes the annual *Cato Supreme Court Review*, and files amicus briefs with the courts. This case interests Cato because vague criminal laws lead to the arbitrary use of government power and the violation of individual liberties.

## SUMMARY OF ARGUMENT

Justice Robert Jackson warned more than fifty years ago:

> If the prosecutor is obliged to choose his cases, it follows that he can choose his defendants. Therein is the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted. With the law books filled with a great assortment of crimes, a prosecutor stands a fair chance of finding at least a technical violation of some act on the part of almost anyone. In such a case . . . it is a question of picking the man and then searching the law books, or putting investigators to work, to pin some offense on him. It is in this

> realm—in which the prosecutor picks some person whom he dislikes or desires to embarrass, or selects some group of unpopular persons and then looks for an offense, that the greatest danger of abuse of prosecuting power lies.

Robert H. Jackson, *The Federal Prosecutor*, 31 J. Am. Inst. of Crim. L. & Criminology 3, 5 (1941).

As serious as this danger is in the realm of vague criminal law, it is equally real with regard to civil law—and the danger may be even greater when the vague law being enforced is a common law legal theory rather than a statute. This Court has repeatedly invoked the principles of due process to hold that individual criminal defendants are entitled to fair warning of what the law forbids and what the likely punishment will be. Those principles should apply with equal force when the defendant is a sophisticated business entity, or when the laws at issue are classified as civil rather than criminal, or when the case involves a common law tort rather than a statute.

Amici take no position on whether or not the "honest services fraud" statute can be construed in a way that satisfies due process principles, or whether the particular Defendant in this case violated that statute. But regardless of how the Court answers those questions, criminal and civil defendants—including white collar and business defendants—deserve the protection of the Due Process Clause's prohibition against vagueness.

## ARGUMENT

### I

### VAGUE STATUTES OFFEND THE PRINCIPLES OF DUE PROCESS

The principle behind the "void for vagueness" doctrine is that it is fundamentally unfair to punish a defendant who does not have, and cannot have, reasonable warning that the conduct at issue was illegal. A person must be able to know with some realistic degree of certainty whether a particular act will violate the law. *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939) ("No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids."). This requirement prevents arbitrary punishment, which would violate the constitutional prohibition against depriving a person of liberty without due process of law. *Hill v. Colorado*, 530 U.S. 703, 732 (2000).

Due process of law, as Daniel Webster explained almost two centuries ago, means "'the general law, a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial,' so 'that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society.'" *Hurtado v. California*, 110 U.S. 516, 535-36 (1884) (quoting *Trustees of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 581 (1819) (argument of Mr. Webster)). For the government to act arbitrarily or against specific persons, rather than pursuant to general, comprehensible, and pre-announced rules, would render the law an instrument of arbitrary will in the hands of government officials. Thus due process prohibits "acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments and decrees, and other similar special, partial, and arbitrary exertions of power." *Id.* at 536.

These requirements of fair notice and warning, and the prohibition against the arbitrary and vindictive use of the laws, are often simply called the rule of "fundamental fairness." *See, e.g., Rogers v. Tennessee*, 532 U.S. 451, 460 (2001). They forbid the government from enforcing laws which are written "in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926). Punitive laws must "employ[] words or phrases having a technical or other special meaning, well enough known to enable those within their reach to correctly apply them, or a well-settled common-law meaning, notwithstanding an element of degree in the definition as to which estimates might differ." *Id.* (citations omitted).

Vague laws involve three basic dangers. First, they "may trap the innocent" by failing to give people "a reasonable opportunity to know what is prohibited." Second, they encourage "arbitrary and discriminatory enforcement" because vague laws "delegate[] basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis." Third, because citizens will try to "steer far wider of the unlawful zone" than necessary, vague laws "inhibit the exercise of . . . freedoms." *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972) (citations and quotation marks omitted).

Vague statutes invite abuse by enforcement agencies—not only police officers, but as Justice Jackson warned, particularly by government prosecutors or private plaintiffs. *See* Jackson, *supra*; *see also* John Calvin Jeffries, Jr., *Legality, Vagueness, and the Construction of Penal Statutes*, 71 Va. L. Rev. 189, 197 (1985) ("Prosecutors in this country have enormous discretion, and their decisions are largely unconstrained by law."). Vagueness gives plaintiffs and prosecutors leverage to make unfair demands of defendants, to threaten defendants with punishment for relatively minor infractions, or to exploit their positions of authority for improper motives. Indeed, because vague laws are enforced in an ad hoc and subjective manner, they essentially give enforcement officials "the *de facto* power of determining what the criminal law in action shall be." Henry M. Hart, Jr., *The Aims of the Criminal Law*, 23 Law & Contemp. Probs. 401, 428 (1958).

Also, vagueness undermines the capacity of democratic institutions to control the operations of government. James Madison famously observed that it would "be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if . . . no man, who knows what the law is to-day, can guess what it will be to-morrow." *The Federalist* No. 62, at 381 (James Madison) (Clinton Rossiter ed., 1961). When statutes are so vaguely worded that the public finds them incomprehensible, voters will not be able to predict, understand, or discipline the conduct of government officials, who can rationalize their arbitrary conduct by pointing to a statute that seems to authorize their actions in broad and imprecise terms. *See* Samuel W. Buell, *The Upside of Overbreadth*, 83 N.Y.U. L. Rev. 1491, 1554 (2008) ("When enforcers use open-textured statutes to address new behaviors, and courts interpret such statutes to facilitate these efforts, criminal law develops outside of the legislative process.").

Meanwhile, private interest groups that stand to gain from particular interpretations of statutes can exploit that authority for their own self-interest while portraying their conduct as public spirited. *See* Keith N. Hylton & Vikramaditya Khanna, *A Public Choice Theory of Criminal Procedure*, 15 Sup. Ct. Econ. Rev. 61, 104 (2007) ("[Excessive] discretion gives enforcement agents wide power to extract wealth through the criminal law enforcement process. This raises the specter of rent-seeking.").

Examples of the abuse of vague statutes abound. For instance, in *United States v. Councilman*, 245 F. Supp. 2d 319 (D. Mass. 2003), *aff'd*, 373 F.3d 197 (1st Cir. 2004), *rev'd*, 418 F.3d 67 (1st Cir. 2005) (en banc), the defendant was charged with violating the federal wiretapping statute (18 U.S.C. § 2511), which forbids the interception of transmitted messages. The defendant was charged with accessing electronic messages while they were stored, and *not* while in transit. Confronted with the question of whether one could conceivably "intercept" a message that was not in transit, the district court ruled for the defendant. 245 F. Supp. 2d at 321. The court of appeals panel affirmed this conclusion, 373 F.3d at 204, but the en banc court reversed. 418 F.3d at 82-85.

Astonishingly, the en banc court rejected the defendant's vagueness challenge, and held that the statute clearly and unambiguously prohibited him from accessing stored messages, even though the district court and the appellate panel, as well as the Courts of Appeals for the Ninth, Third, Eleventh, and Fifth Circuits had all ruled to the contrary, *see id.* at 87 (Torruella, J., dissenting) (citing cases), and even though the en banc majority acknowledged that the statute suffered from "continuing ambiguity," *id.* at 76, that tendered "the plain text [of the statute] . . . not so plain." *Id.* at 73. Indeed, the en banc court turned to legislative history to determine the statute's meaning, *id.* at 76-79, even though use of legislative history is only called for when statutory language is ambiguous. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). If federal courts of appeals are in disarray as to the statute's meaning, and must consult legislative history to resolve its "continuing ambiguity," it can hardly be said to be clear enough to provide a layman with guidance as to what is and is not legally allowed.

Even more abusive was the prosecution of the Arthur Andersen accounting firm. *United States v. Arthur Andersen, LLP*, 374 F.3d 281 (5th Cir. 2004), *rev'd*, 544 U.S. 696 (2005). Arthur Andersen refused to agree to the Department of Justice's offer to defer prosecution in exchange for disclosure of certain information and a promise to testify against its former client, Enron. *See* Harvey A. Silverglate, *Federal Criminal Law: Punishing Benign Intentions – A Betrayal of Professor Hart's Admonition to Prosecute Only the Blameworthy*, in *In the Name of Justice* 65, 81 (Timothy Lynch ed., 2009). In retaliation for this refusal, the Department indicted the company for obstruction of justice, alleging that the company's management "corruptly persuaded" employees to destroy documents. *Id.* at 82. After the defendants were convicted, this Court unanimously reversed. The company's destruction of documents pursuant to a routine office policy was "by itself innocuous," *Arthur Andersen*, 544 U.S. at 703, and the vagueness of the charge against Arthur Andersen was "striking." *Id.* at 706. That vagueness gave federal prosecutors unwarranted power to manipulate or threaten potential defendants for potentially "innocent conduct." *Id.*

The instructions to the jury were so broadly worded that it was not necessary for the prosecutor to prove the defendant's dishonesty, "and it was enough for petitioner to have simply 'impede[d]' the Government's factfinding ability." *Id.* This definition would include conduct that "is not inherently malign," *id.* at 704, so that prosecutions could be brought against "anyone who innocently persuades another to withhold information from the Government." *Id.* at 707. A narrowing construction of the statute was therefore appropriate.

In *United States v. Stein*, 435 F. Supp. 2d 330 (S.D.N.Y. 2006), *aff'd*, 541 F.3d 130 (2d Cir. 2008), the district court found that the government had "let its zeal get in the way of its judgment" and "violated the Constitution it is sworn to defend," *id.* at 336, when prosecutors used threats of prosecution to obtain concessions from the company KPMG, even though it was never proven to have violated any law. *See generally* Harvey A. Silverglate, *Three Felonies a Day* 138-57 (2009).

The government asserted that KPMG sold tax shelters that were illegal, but the firm argued that its actions were lawful. The laws governing tax shelters are so byzantine that it is virtually impossible for a business to know before prosecution whether they are or are not legal. *See* Patricia B. Hsue, *Lessons From United States v. Stein: Is the Line Between Criminal and Civil Sanctions for Illegal Tax Shelters a Dot?*, 102 Nw. U. L. Rev. 903, 929 (2008) ("Given the uncertainty in judicial determinations of the legality of tax shelters, it will be difficult for the government to demonstrate that the defendants (or anyone) knew that the tax shelters that KPMG designed and marketed were illegal."). Indeed, the applicable jurisprudence is "a myriad of seemingly contradictory decisions." *Id.* at 917 (citing cases).

Given this vagueness, the government's attorneys chose not to prosecute their case, but instead increased pressure on KPMG. The government promised to refrain from indicting the firm in exchange for a concession that the tax shelters were illegal, and for KPMG's agreement not to pay for the legal defense of its directors. *Stein*, 435 F. Supp. 2d at 344. Judge Kaplan concluded that these tactics violated the Sixth Amendment.

> Justice is not done when the government uses the threat of indictment—a matter of life and death to many companies and therefore a matter that threatens the jobs and security of blameless employees—to coerce companies into depriving their present and even former employees of the means

> of defending themselves against criminal charges.

*Id.* at 381-82.

This type of unfair leverage is made possible by vague laws that, as attorney Harvey Silverglate writes, empower prosecutors to "target individuals in all sectors of civil society for having broken laws by committing acts that they did not, and could not reasonably, know were illegal." Silverglate, *Federal Criminal Law, supra,* at 92. The vague definitions of such statutes "serve to ensnare those who did not intend to break the law and who believed in good faith that their conduct was lawful." *Id.*

There is perhaps no statute more vague than the "honest services fraud" statute, as indicated by the futile efforts of many federal courts to devise a consistent interpretation of it. Rather than devising an authoritative interpretation, the result has been a kaleidoscope of inconsistent and inconclusive tests. The Fifth Circuit held that the statute only prohibits conduct that is already unlawful under state law, *see, e.g., United States v. Brumley,* 116 F.3d 728, 735 (5th Cir. 1997) (en banc), while the Seventh Circuit holds that it prohibits the breach of broader fiduciary duties, not just those imposed by state law. *United States v. Martin,* 195 F.3d 961, 966-67 (7th Cir. 1999). The Seventh Circuit holds that the statute only prohibits conduct that benefits the defendant personally, *United States v. Bloom,* 149 F.3d 649, 655 (7th Cir. 1998), while the Third Circuit holds that this is not a required element. *United States v. Panarella,* 277 F.3d 678, 692 (3d Cir. 2002).

In *United States v. Handakas*, 286 F.3d 92, 104 (2d Cir. 2002), a panel of the Court of Appeals concluded that "the text of § 1346 simply provides no clue to the public or the courts as to what conduct is prohibited." That decision was later overruled by a divided en banc court, but if legal scholars, lawyers, and appellate judges are unable to agree on a coherent definition of "the intangible right to honest services," it is unfair to hold that the statute provides fair warning to the lay public. *Id.* at 109 n.10. *See also id.* at 104 ("[A] penal statute must speak for itself so that a lay person can understand the prohibition. It is not enough to say that judges can intuit the scope of the prohibition if [the defendant] could not." (citation omitted)).

When the en banc court overruled *Handakas* in *United States v. Rybicki*, 354 F.3d 124 (2d Cir. 2003), it went to heroic lengths to "properly curtail the statute's reach." *Id.* at 135 n.7. Admitting that judges would "labor long and with difficulty in seeking a clear and properly limited meaning" of the statute "simply by consulting a dictionary for the literal, 'plain' meaning of the phrase," *id.* at 135, the court relied on case law antedating the statute's enactment to promulgate a set of elements for proving a violation. The deprivation of the intangible right of honest services

> means a scheme or artifice to use the mails or wires to enable an officer or employee of a private entity . . . purporting to act for and in the interests of his or her employer . . . secretly to act in his or her or the defendant's own interests instead, accompanied by a material misrepresentation made or

> omission of information disclosed to the employer or other person.

*Id.* at 141-42. The problem with this definition is that it would appear to criminalize all contractual disputes and all breaches of fiduciary duties to employers. David Mills & Robert Weisberg, *Corrupting the Harm Requirement in White Collar Crime*, 60 Stan. L. Rev. 1371, 1419 (2008). Indeed, the *Rybicki* test does not include any requirement that the employer or other "victim" suffer any foreseeable injury—merely that the defendant form an intention to breach a duty. This means that the only breaches of duty not covered by the statute are accidental ones; otherwise, the *Rybicki* test sweeps in all sorts of self-benefitting dishonesty. "Provided it is established that the defendant concealed a breach of fiduciary duty (the actus reus of the offense), it should be easy for the prosecutor to convince the trier of fact to infer that the breach was intentional and therefore conclude that the requisite mens rea was satisfied." Andrew B. Matheson, *A Critique of United States v. Rybicki: Why Foreseeable Harm Should Be an Aspect of the Mens Rea of Honest Services Fraud*, 28 Am. J. Trial Advoc. 355, 378 (2004).

Thus there is much truth to Justice Scalia's observation that, taken literally, the honest services fraud statute "would seemingly cover a salaried employee's phoning in sick to go to a ball game." *Sorich v. United States*, 129 S. Ct. 1308, 1309 (2009) (Scalia, J., dissenting from denial of certiorari).

Whatever the intrinsic value of the *Rybicki* factors, the language of the statute itself does not give fair warning to the lay public that it is the applicable test. Indeed, federal judges have not agreed on the

*Rybicki* test. The en banc decision included several dissents and concurrences. The dissenting judges argued not only that the statute "imposes insufficient constraint on prosecutors, gives insufficient guidance to judges, and affords insufficient notice to defendants," 354 F.3d at 157 (Jacobs, J., dissenting), but also that whatever value the newly established test might have, it "gets us nowhere in terms of limits on prosecutorial power and *notice to the public*," because it "requires *lay persons* to do lawyer-like tasks that few lawyers would have the skills to perform." *Id.* at 158-59 (emphasis added). If the en banc court of appeals could not agree on the complex analytical framework woven together in the leading case on the meaning of "honest services fraud," then surely the statute cannot be clear enough to provide sufficient warning to defendants. "Ordinary people cannot be expected to undertake such an analysis; rare is the lawyer who could do it; and no two lawyers could be expected to agree independently on the elements of an offense that must be defined by such a project." *Id.* at 160. Meanwhile, at least one other court has declined to adopt the *Rybicki* test. *See United States v. Chandler*, 376 F.3d 1303, 1313 (11th Cir. 2004) (post-*Rybicki* decision agreeing with *Handakas*).

The wide variety of appellate decisions demonstrate that even the professional bar cannot agree on the meaning of the statute's language. As Professor Hart observed, *supra*, at 420, condemning a layman "for a default of technical judgment in a matter which causes trouble even for professional judges is, in many cases, so manifestly beyond reason that courts have developed various makeshift devices to avoid condemnation in particular situations." Here, the makeshift devices formulated by courts of appeals have failed to lay out authoritative guidelines for applying the statute. The law appears to be the prototypical vague statute proscribing "bad conduct." *Cf. Junction 615, Inc. v. Ohio Liquor Control Comm'n*, 732 N.E.2d 1025, 1032-33 (Ohio Ct. App. 1999) (finding legal prohibition of "improper conduct" unconstitutionally vague). It is simply too vague to explain to any individual what conduct is and is not permitted, and cannot withstand due process analysis.

## II

## THE COURT SHOULD CLARIFY THAT THE VOID FOR VAGUENESS DOCTRINE PROTECTS SOPHISTICATED DEFENDANTS AND BUSINESS ENTITIES AS WELL AS INDIVIDUAL CRIMINAL DEFENDANTS

The case at bar involves a white collar crime prosecuted under federal criminal law. But the dividing line between criminal and civil law is often unclear, and this Court should clarify that the void for vagueness doctrine applies not only in the context of routine criminal trials but also with regard to complex business regulations and to civil statutes. "[E]nforcing a sharp dividing line between civil and criminal due process rules is untenable because there is not a comparably sharp dividing line between criminal and civil cases." Niki Kuckes, *Civil Due Process, Criminal Due Process*, 25 Yale L. & Pol'y Rev. 1, 52 (2006). There is no justification in the void for vagueness doctrine—let alone in the Due Process Clause—for discriminating between criminal and civil law, or between simple criminal infractions and sophisticated white collar crime.

### A. The Distinction Between Criminal and Civil Law Is Indistinct, Particularly in White Collar Crime and Business Regulation

Although the distinction between civil and criminal laws at first seems clear, it often becomes indistinct on close inspection. "If one were to judge from the notions apparently underlying many judicial opinions, and the overt language of some of them, the solution of the puzzle is simply that a crime is anything which is *called* a crime . . . . So vacant a concept is a betrayal of intellectual bankruptcy." Hart, *supra*, at 404.

This Court has often struggled to conceptualize the distinction between civil and criminal law. *See, e.g., Smith v. Doe*, 538 U.S. 84, 92-106 (2003). The collapse of that distinction is particularly noteworthy when civil penalties incur such sanctions as punitive damages, *see Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 47-48 (1991) (O'Connor, J., dissenting) ("Here . . . the civil/criminal distinction is blurry. Unlike compensatory damages, which are purely civil in character, punitive damages are, by definition, punishment . . . [and therefore subject to the] void for vagueness [doctrine]."), or asset forfeiture, *see United States v. Bajakajian*, 524 U.S. 321, 331 n.6 (1998) ("some recent federal forfeiture laws have blurred the traditional distinction between civil in rem and criminal in personam forfeiture"), or physical confinement. *See, e.g., Kansas v. Hendricks*, 521 U.S. 346, 361-65 (1997) (concluding that state could confine an individual civilly after he completed his criminal sentence).

When a corporation commits criminal wrongdoing, the distinction between criminal and civil crumbles even more. *See* Sharon Finegan, *The False Claims Act and Corporate Criminal Liability: Qui Tam Actions, Corporate Integrity Agreements and the Overlap of Criminal and Civil Law*, 111 Penn St. L. Rev. 625, 652-54 (2007) (discussing "the blurring of criminal and civil liability" in cases against corporations); V.S. Khanna, *Corporate Criminal Liability: What Purpose Does It Serve?*, 109 Harv. L. Rev. 1477, 1497-1512 (1996) (civil sanctions against corporations are essentially identical with criminal sanctions). Corporations, of course, do not make decisions—only individual people do—and cannot be imprisoned. Thus the most obvious difference between civil and criminal penalties cannot apply in criminal prosecutions of corporate defendants.

Civil and criminal penalties can both result in the loss of liberty and property. Both can impose a long and complicated series of court processes on defendants. Both embody society's expression of disapproval of, and its imposition of punishment for, wrongful behavior. Both civil and criminal defendants are entitled to "an impartial and disinterested tribunal," *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980), and to "fair notice not only of the conduct that will subject [the defendant] to punishment, but also of the severity of the penalty that a State may impose." *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574 (1996). Given the difficulty of establishing a clear line between criminal and civil law, there is no warrant for treating them as categorically distinct for purposes of the void for vagueness doctrine. "It is the importance of the right to the individual, not the technical distinction between civil and criminal, which should be of importance to a court in deciding what procedures are constitutionally required in each case." *Lee v. Habib*, 424 F.2d 891, 901 (D.C. Cir. 1970).

### B. Basic Due Process Protections, Including the Clarity Requirement, Apply to Both Civil and Criminal Law

Although most cases involving the "constitutional requirement of definiteness," *United States v. Harriss*, 347 U.S. 612, 617 (1954), have dealt with criminal statutes, the definiteness requirement also applies outside the criminal context. *Boutilier v. INS*, 387 U.S. 118, 123 (1967) ("[T]he 'void for vagueness' doctrine [is] applicable to civil as well as criminal actions."); *Baggett v. Bullitt*, 377 U.S. 360, 367 (1964) (applying vagueness doctrine to requirement that teachers take loyalty oaths); *Geo-Tech Reclamation Indus., Inc. v. Hamrick*, 886 F.2d 662, 666 (4th Cir. 1989) (applying vagueness doctrine to law determining sites for landfills).

In *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991), for example, the Court invalidated a rule of the Nevada state bar as void for vagueness. That rule prohibited attorneys from making public statements to the press that "the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding," *id.* at 1033 (citation omitted), although the rule contained an exception allowing attorneys to "state without elaboration . . . the general nature of the . . . defense." *Id.* at 1048. This language was not clear enough to satisfy the requirements of due process:

> Given this grammatical structure, and absent any clarifying interpretation by the

> state court, the Rule fails to provide "fair notice to those to whom [it] is directed." A lawyer seeking to avail himself of [the exception] must guess at its contours. The right to explain the "general" nature of the defense without "elaboration" provides insufficient guidance because "general" and "elaboration" are both classic terms of degree. In the context before us, these terms have no settled usage or tradition of interpretation in law. The lawyer has no principle for determining when his remarks pass from the safe harbor of the general to the forbidden sea of the elaborated.

*Id.* at 1048-49 (quoting *Grayned*, 408 U.S. at 112). It was not necessary for the attorney to show that the rule had been arbitrarily enforced; the fact that the rule was so vague as to make arbitrary enforcement likely was sufficient. *Id.* at 1050. The Court emphasized the fact that even attorneys, presumably experts in interpreting rules like the one at issue, were unable to settle on the actual meaning of the rule in question: "The fact that Gentile was found in violation of the Rules after studying them and making a conscious effort at compliance demonstrates that [the rule] creates a trap for the wary as well as the unwary." *Id.*

In a series of cases in the 1920s, this Court also found provisions of the Lever Act (40 Stat. 276 (1917)) unconstitutionally vague. *A.B. Small Co. v. American Sugar Refining Co.*, 267 U.S. 233 (1925), *United States v. L. Cohen Grocery Co.*, 255 U.S. 81 (1921), *Weeds, Inc. v. United States*, 255 U.S. 109 (1921). That Act prohibited any person from "mak[ing] any unjust or unreasonable . . . charge in . . . dealing in or with any necessaries" or "exact[ing]" an "excessive price[]" for "any necessaries." *American Sugar Refining Co.*, 267 U.S. at 238. These terms rendered the statute "so vague and indefinite that no one could know what it was." *Id.* at 238-39. Indeed, the statute's language provided no ascertainable standard of guilt, nor did it inform a person charged with violating it of the nature of the accusation. *L. Cohen Grocery Co.*, 255 U.S. at 89. The language "forb[ade] no specific or definite act." *Id.* Notably, while *L. Cohen Grocery Co.* and *Weeds, Inc.*, both involved charges of felonious conduct, *American Sugar Refining Co.* was a civil case in which the defendant relied upon the Lever Act as a defense to a charge of breach of contract.

Courts also frequently apply the vagueness principle in the context of nuisance law. For example, in *Grayned*, 408 U.S. at 112, a protestor was convicted of violating a noise-abatement ordinance which prohibited a person from making "any noise or diversion which disturbs or tends to disturb the peace or good order" of a nearby school campus. 408 U.S. at 108. The protestor claimed that the law was unconstitutionally vague. While rejecting this claim, Justice Marshall explained that "a basic principle of due process" requires that the law "clearly define[]" its "prohibitions." *Id.* So, too, in *Grove Press Inc. v. City of Philadelphia*, 418 F.2d 82 (3d Cir. 1969), the Third Circuit Court of Appeals held that Pennsylvania authorities could not use a public nuisance theory to prohibit an allegedly obscene film. The court acknowledged that the state could regulate obscenity, but "the standard of regulation [may not] be so vague and indefinite 'that men of common intelligence must necessarily guess at its meaning.'" *Id.* at 87 (quoting

*Connally*, 269 U.S. at 391). Terms like "injury to the public," and "unreasonableness," were "too elastic and amorphous a standard" to satisfy the requirement of definiteness; such terms were so "indefinite" that the "executive and judicial branches" were left with "'too wide a discretion in its application.'" *Id.* at 88 (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940)). *Accord, Rubin v. City of Santa Monica*, 823 F. Supp. 709, 713 (C.D. Cal. 1993); *Connick v. Lucky Pierre's*, 331 So. 2d 431, 434-35 (La. 1976).

There is therefore no warrant for distinguishing between civil and criminal law in the application of the void for vagueness doctrine. Civil statutes no less than criminal laws can impose severe sanctions on individuals and businesses. Indeed, courts often have difficulty even determining what punitive statutes qualify as "civil" and what qualify as "criminal." This confusion is even worse in the context of common law causes of action such as "public nuisance," which was originally a common law crime, but is today regarded as a common law civil tort.

### C. Vague Common Law Concepts Like "Public Nuisance" Lend Themselves to Frequent Abuse

If vague statutory crimes are subject to exploitative and unequal enforcement, vague common law theories are even more subject to abuse. This is particularly evident with the theory of "public nuisance." Although it originated as a common law crime, *see* 2 William Blackstone, *Commentaries* *220, modern courts generally consider it a common law civil tort. Yet it is enforced by public officials, and the government can obtain punitive damages for violations. *See, e.g., Camden County Bd. of Chosen*

*Freeholders v. Beretta, U.S.A. Corp.*, 273 F.3d 536, 538 (3d Cir. 2001) (public nuisance suit seeking punitive damages against gun maker for selling firearms). It is not at all clear whether a public nuisance claim, brought by a public official seeking punitive damages, is actually any different from a criminal prosecution.

There is no legal consensus on what constitutes a "public nuisance." Indeed, this concept is so vague that legal scholars have referred to it as a "'wilderness' of law," Horace Wood, *The Law of Nuisances* iii (3d ed. 1893); a "mystery," Warren A. Seavey, *Nuisance: Contributory Negligence and Other Mysteries*, 65 Harv. L. Rev. 984, 984 (1952); a "legal garbage can" full of vagueness, uncertainty and confusion, William L. Prosser, *Nuisance Without Fault*, 20 Tex. L. Rev. 399, 410 (1942); a "mongrel" doctrine "intractable to definition," F.H. Newark, *The Boundaries of Nuisance*, 65 L.Q. Rev. 480, 480 (1949); a "sprawling doctrine," *Grove Press Inc.*, 418 F.2d at 88, and a "quagmire," John E. Bryson & Angus Macbeth, *Public Nuisance, the Restatement (Second) of Torts, and Environmental Law*, 2 Ecology L.Q. 241, 241 (1972).

Thanks to this vagueness, public officials have frequently exploited the theory of public nuisance to seek massive civil penalties against business entities for allegedly wrongful acts. Indeed, public officials have invoked the nuisance doctrine against businesses for legal and non-tortious acts, such as the production and sale of electricity, *see Connecticut v. Am. Elec. Power Co. Inc.*, 582 F.3d 309 (2d Cir. 2009), or firearms, *see Beretta, U.S.A. Corp.*, 273 F.3d at 538; *James v. Arms Tech., Inc.*, 820 A.2d 27 (N.J. Super. Ct. App. Div. 2003), or automobiles, *see General Motors Corp.*, 2007 WL 2726871, or petroleum products, *see Comer v. Murphy Oil USA*, No. 07-60756, 2009 WL 3321493 (5th Cir. Oct. 16, 2009), or the sale of lead paint when lead paint was legal. *See, e.g., In re Lead Paint Litig.*, 924 A.2d 484, *Lead Indus. Ass'n, Inc.*, 951 A.2d 428, *County of Santa Clara v. Atlantic Richfield Co.*, 137 Cal. App. 4th 292 (2006).

The elements of public nuisance are so imprecise and broadly worded that the tort sweeps in an enormous variety of conduct and appears to allow public officials to punish anything that they consider to be bad for the public—even if the conduct was lawful and non-tortious at the time it was committed. The due process definiteness requirement ought to apply to all government attempts to punish, whether classified as criminal or civil, whether brought under statutes or common law theories.

### D. There Is No Warrant for a Categorical "Sophistication" Exception

This Court has unfortunately stated at times that the clarity requirement is less stringent in cases involving businesses. *See, e.g., Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-99 (1982). The basis for this view is that laws regulating business conduct are generally of a more narrow scope, and because businesses can afford to obtain legal counsel to advise them on the legality of their activities, or to seek administrative relief where a business regulation requires some amendment. *See id.* But while these justifications may initially appear reasonable, in the present day context they are often inapplicable.

First, many laws regulating business conduct do not have a narrow scope. The Sherman Antitrust Act, for example, prohibits "[e]very contract . . . in restraint of trade or commerce among the several States." The Robinson-Patman Act prohibits any person "either directly or indirectly" to "discriminate in price between different purchasers of commodities of like grade and quality," if that discrimination "may . . . substantially [] lessen competition or tend to create a monopoly." *See further United States v. Nat'l Dairy Products Corp.*, 372 U.S. 29, 34-36 (1963) (adopting narrowing construction to avoid vagueness problems with Robinson-Patman). Some common law torts relating to businesses are even broader. As noted above, there has never been a consensus among legal scholars or judges as to the meaning of "public nuisance." Likewise, the tort of "interference with contract" is so broad that one expert characterized it as making "the whole competitive order of American industry . . . prima facie illegal." *See* Gary D. Wexler, *Intentional Interference with Contract: Market Efficiency and Individual Liberty Considerations*, 27 Conn. L. Rev. 279, 279 (1994) (quoting Carl Auerbach).

Second, while as a general rule, businesses are probably more able to afford legal advice than are individuals, overly vague and complicated statutes are often incomprehensible even to expert attorneys. Modern law, both civil and criminal, both statutory and common law, is often so complicated and vaguely worded that even the most expert attorneys cannot understand them or advise clients with any degree of certainty about what conduct is and is not proscribed. This is obvious in the case of vague criminal statutes like that at issue here, the meaning of which is disputed amongst federal appellate judges, but today's pervasively regulated state also imposes a labyrinth of highly technical regulations, incomprehensible even to specialist attorneys. As the chief judge of the Ninth Circuit Court of Appeals recently wrote, "[i]t is impossible to know how many Americans are federal criminals. There are thousands of federal crimes and hundreds of thousands of federal regulations that can be criminally enforced . . . that make people criminals for unwittingly breaking complex environmental, shipping, and worker safety rules." Alex Kozinski & Misha Tseytlin, *You're (Probably) a Federal Criminal*, *in* Lynch, *supra*, at 44-45.

Administrative regulations, too, are often written in such broad language that their actual meaning or applicability is impossible to predict. Michael B. Enzi, *The Safety Advancement for Employees Act*, 35 Harv. J. on Legis. 335, 338 (1998) ("Many of OSHA's regulations are so vague that to expect a small business employer to correctly interpret them is practically inconceivable.").

In *Cape & Vineyard Div. of New Bedford Gas & Edison Light Co. v. Occupational Safety & Health Review Comm'n*, 512 F.2d 1148, 1152 (1st Cir. 1975), for example, an OSHA regulation was unconstitutionally vague where it required workers to use protective equipment whenever it was "necessary by reason of hazards . . . encountered in a manner capable of causing injury . . . through physical contact." *Id.* This regulation lacked ascertainable standards, and "[did] not provide constitutionally adequate warning." *Id.*

In *Big Mama Rag, Inc. v. United States*, 631 F.2d 1030, 1036 (D.C. Cir. 1980), the court of appeals found a Treasury Department regulation overly vague where it defined the term "educational institution" so broadly that government officials had "no objective standard by which to judge which applicant organizations are advocacy groups—the evaluation is made solely on the basis of one's subjective notion of what is 'controversial.'"

In *Trinity Broad. of Florida, Inc. v. FCC*, 211 F.3d 618 (D.C. Cir. 2000), the court of appeals found that a regulation "fail[ed] to make clear" the definition of "minority-controlled" television stations. *Id.* at 628. The regulation was so unclear that the agency itself "'struggle[d] to provide a definitive reading of the regulatory requirements,'" and thus failed to provide constitutionally required notice of the legal requirements. *Id.* at 632 (citation omitted). *See also United States v. Chrysler Corp.*, 158 F.3d 1350, 451 (D.C. Cir. 1998) (Highway Traffic Administration rule too vague to give fair warning); *General Elec. Co. v. U.S.E.P.A.*, 53 F.3d 1324, 1328-34 (D.C. Cir. 1995) (EPA regulation too vague); *Gates & Fox Co., Inc. v. Occupational Safety & Health Review Comm'n*, 790 F.2d 154, 156 (D.C. Cir. 1986) (OSHA regulation too vague). And, as noted above, common law civil torts like "public nuisance" are even more dangerously vague, since they cannot even be definitively categorized as civil or criminal, let alone defined in terms of specific elements.

Nor is it true that businesses are regularly able to afford legal assistance. While Fortune 500 companies can obtain the skills of top attorneys, most businesses in America are small businesses, who cannot easily afford access to legal help. Janet W. Steverson, *I Mean What I Say, I Think: The Danger to Small Businesses of Entering into Legally Enforceable Agreements That May Not Reflect Their Intentions*, 7 J. Small & Emerging Bus. L. 283, 308-09 (2003).

These businesses are often at the mercy of plaintiffs who exploit broadly worded statutes, such as California's "extremely vague" unfair competition law. Eugene S. Suh, *Stealing from the Poor to Give to the Rich? California's Unfair Competition Law Requires Further Reform to Properly Restore Business Stability*, 35 Sw. U. L. Rev. 229, 230 (2006). This law, which prohibits "any unlawful, unfair or fraudulent business act or practice," Cal. Bus. & Prof. Code § 17200, has become notorious for its abuse in the hands of opportunistic litigants and "professional plaintiffs." *Molski v. Mandarin Touch Rest.*, 347 F. Supp. 2d 860, 868 (C.D. Cal. 2004). Plaintiffs generally exploit the fact that small businesses cannot afford legal representation and once a complaint is filed, will settle for a few thousands dollars at a time. *See Consumer Def. Group v. Rental Hous. Indus. Members*, 137 Cal. App. 4th 1185, 1216 n.22 (2006) ("small businesses were the particular province of [legal] shakedowns, because such businesses would often be willing to spend around $2,000 to buy their peace rather than the same amount on an attorney to defend the case.").

Although ignorance of the law is generally held to be no excuse, *Bryan v. United States*, 524 U.S. 184, 195 (1998), that rule, like any other, cannot apply where the reason for the rule is inapplicable. Ignorance of the law is no excuse only where a reasonable person should be aware of the legal limits because they are a matter of general common sense, or where the person is capable of, and has a duty to, investigate what law applies to his conduct. But ignorance of the law must be an excuse in at least some extreme cases—and particularly in cases involving "highly technical statutes that present[] the danger of ensnaring individuals engaged in apparently innocent conduct." *Id.* at 194.

In *Gentile*, 501 U.S. 1030, the statute regulating attorney conduct was too vague for the attorney to comprehend. So, too, are many statutes and common law theories that affect businesses, that are written in terms so vague that even legal experts cannot agree on an interpretation of their terms. No amount of consultation with legal experts can ensure that a business entity can comply with such vague standards; they are, therefore, vague "not in the sense that [they] require[] a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all." *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971).

"A philosopher of note has said that 'ought' implies 'can.'" *United States v. Jefferson*, 760 F.2d 821, 828 n.5 (7th Cir.), *rev'd*, 474 U.S. 806 (1985), and where the laws are so incomprehensible that even legal experts cannot advise citizens on how to consist with the demands of the law, it is unjust to hold citizens to such a standard of conduct. *See also Pope v. Illinois*, 481 U.S. 497, 517 (1987) (Stevens, J., dissenting) ("Under ordinary circumstances, ignorance of the law is no excuse . . . . But . . . [i]f a legislature cannot define the crime, [citizens] should not be expected to. Criminal prosecution under these circumstances 'may be as much of a trap for the innocent as the ancient laws of Caligula.'" (quoting *United States v. Cardiff*, 344 U.S. 174, 176 (1952))).

◆

## CONCLUSION

The due process requirements of fair warning and definiteness that apply through the "void for vagueness" doctrine are equally vital in the context of white collar business crimes, business torts, and civil regulations. This Court should clarify that the constitutional prohibition on vague laws protects sophisticated and unsophisticated defendants in the realms of economic regulation as well as criminal law.

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# AMICUS
# CURIAE
# BRIEF

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In The
# Supreme Court of the United States

◆

JEFFREY K. SKILLING,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

◆

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Fifth Circuit**

◆

## BRIEF OF THOMAS RYBICKI AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

◆

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# QUESTION PRESENTED

Whether 18 U.S.C. § 1346, which states in pertinent part that "the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services," provides fair warning of the conduct it seeks to proscribe and minimal guidelines to law enforcement, or is it unconstitutionally vague.

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## INTEREST OF *AMICUS CURIAE*[1]

*Amicus*, Thomas Rybicki, was a named defendant in *United States v. Rybicki*,[2] a matter central to the controversy concerning the constitutionality of 18 U.S.C. § 1346. Rybicki respectfully submits this brief as *Amicus Curiae* in support of the Petitioner in order to address the vagueness of the statute in the context of the instant matter.

◆

## SUMMARY OF ARGUMENT

Petitioner, Jeffrey Skilling, was convicted of conspiracy, securities fraud, making false representations to auditors, and insider trading. *See United States v. Skilling,* 554 F.3d 529 (5th Cir. 2009), cert. granted, 130 S.Ct. 393 (2009). As noted by the Circuit Court in affirming the conviction, Skilling argues that his convictions should be reversed because the government used an invalid theory of "honest services" fraud:

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[1] Counsel of record for all parties received notice at least 10 days prior to the due date of *Amicus Curiae's* intention to file this brief. The parties have consented to the filing of this *amicus* brief. Pursuant to Supreme Court Rule 37.6, counsel for *Amicus Curiae* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amicus Curiae* or his counsel made a monetary contribution to this brief's preparation or submission.

[2] *United States v. Rybicki*, 354 F.3d 124 (2d Cir. 2003) (*en banc*), cert. denied, 503 U.S. 809 (2004). The undersigned counsel of record for *Amicus Curiae* was previously the trial counsel for the defendant Grae, Rybicki & Partners, P.C.

> "The jury convicted Skilling of one count of conspiracy. The indictment and the government's theory allowed for three objects of the conspiracy: to commit (1) securities fraud, (2) wire fraud to deprive Enron and its shareholders of money and property, and (3) wire fraud to deprive Enron and its shareholders of the honest services owed by its employees."

*Id.* at 542.

In addressing this issue the Circuit Court held that "[w]hen an employee (1) creates a particular goal, (2) aligns the employee's interests with the employer's interest in achieving that goal, and (3) has higher-level management sanction improper conduct to reach the goal, then lower-level employees following their boss's direction are not liable for honest-services fraud." *Id.* at 545. In that no one at Enron sanctioned Skilling's improper conduct, the Fifth Circuit affirmed his conviction. *Id.* at 546. Moreover, the Fifth Circuit held that "[t]he elements of honest-services wire fraud applicable here are (1) a material breach of a fiduciary duty imposed under state law, including duties defined by the employer-employee relationship, (2) that results in a detriment to the employer." *Id.* at 547. Skilling asserts before this Court that as there was no allegation that he sought to advance his own private interest over that of his employer, application of the "honest services" fraud theory in his case was improper.

The "honest services" fraud statute at issue, 18 U.S.C. § 1346 (*see* 2a, *infra*), was enacted in 1988 to amend Title 18 U.S.C. Part I, Chapter 63, which includes §§ 1341 (mail fraud, *see* 1a, *infra*), and 1343 (wire fraud, *see* 2a, *infra*). Unfortunately, in legislating § 1346 Congress was not clear as to the scope of the statute and courts have struggled with this ambiguity for the past twenty years. Not only does the statute fail to provide "fair warning" of the conduct it proscribes but it provides no guidelines or minimal standards for law enforcement. In this respect it is submitted that § 1346 is so inartfully drafted that it violates the Fifth Amendment's due process requirements (*see* 1a, *infra*), and should be deemed unconstitutionally vague.[3]

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[3] In *United States v. Williams*, 128 S.Ct. 1830, 1845 (2008), the Court held that: "[a] conviction fails to comport with due process if the statute under which it is obtained fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *See also Pierce v. United States*, 314 U.S. 306, 311 (1941) (crimes must be defined with appropriate definiteness).

## ARGUMENT

### I. IT IS THE PURVIEW OF CONGRESS TO CLEARLY LEGISLATE WHAT SHALL BE A CRIME AGAINST THE UNITED STATES AND SUCH DUTY IS NOT DELEGABLE TO THE COURTS

It is well settled that there are no common law offenses against the United States. Thus, criminal offenses against the United States must be explicitly defined and proscribed by Congress. In *United States v. Wiltberger,* 5 Wheat. 76 (1820), the Court recognized Congress' authority to proscribe offenses when it held that "[i]t is the legislature, not the court, which is to define a crime, and ordain its punishment." *Id.* at 95.

In exercising its authority, however, Congress must clearly define what it intends to be a crime. As stated by the Court in *United States v. Harriss,* 347 U.S. 612 (1953):

> "The Constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed."
>
> "On the other hand, if the general class of offense to which the statute is directed is plainly within its terms, the statute will not be struck down as vague, even though

> marginal cases could be put where doubts may arise."

*Id.* at 617-18. *See also Williams, supra*, at 1845.

Similarly, in *Bouie v. City of Columbia*, 378 U.S. 347 (1964), the Court held that "[t]he basic principle that a criminal statute give fair warning of the conduct that it makes a crime has often been recognized by this Court." *Id.* at 350-51. This concept of providing "fair warning" may be found throughout our criminal jurisprudence and has been recently described as the "touchstone" upon which a statute is deemed to pass Fifth Amendment muster. *See United States v. Lanier*, 520 U.S. 259, 267 (1997) (the touchstone is whether the statute standing alone or as construed gives fair warning that conduct was criminal).

To determine whether a particular statute does in fact give fair warning, certain rules for statutory construction are employed. For example, in *United States v. Fisher*, 2 Cranch 358 (1805) (Marshall, C.J.), the Court stated:

> "It is undoubtedly a well established principle in the exposition of statutes, that every part is to be considered, and the intention of the legislature to be extracted from the whole. It is also true, that where great inconvenience will result from a particular construction, that construction is to be avoided, unless the meaning of the legislature be plain; in which case it must be obeyed."

*Id.* at 386. *See also Jerome v. United States*, 318 U.S. 101, 105 (1942) (courts should be reluctant to expand the defined offenses beyond the clear requirements of the terms of the statute).

In *United States v. Thind*, 261 U.S. 204, 209 (1922), the Court held that the words of the statute are to be interpreted in accordance with the understanding of the common man from whose vocabulary they were taken. Moreover, in *Boston Sand Co. v. United States*, 278 U.S. 41, 48 (1928), the Court stated that "[i]f Congress has been accustomed to use a certain phrase with a more limited meaning than might be attributed to it by common practice, it would be arbitrary to refuse to consider that fact when we come to interpret a statute." Similarly, in *United States v. Jin Fuey Moy*, 241 U.S. 394, 401 (1916) (Holmes, J.), the Court asserted that a "statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score." *See also United States v. Petrillo*, 332 U.S. 1, 6 (1946) ([i]f the language Congress employs provides an adequate warning as to what conduct falls under its ban, and marks boundaries sufficiently distinct for judge and juries to administer the law in accordance with the will of Congress, then it is not unconstitutionally vague).

If, however, a statute does not provide a "fair warning" of what conduct is deemed criminal it may be struck down by the court as unconstitutionally vague. In *Connally v. General Construction Company*, 269 U.S. 385 (1925), the Court held:

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

*Id.* at 391. *See also United States v. Universal Corp.*, 344 U.S. 218, 222 (1953) (criminal outlawry should not be derived from an ambiguous implication); *United States v. Cardiff*, 344 U.S. 174, 176 (1952) (Douglas, J.) (vice of vagueness in criminal statutes is the treachery they conceal either in determining what persons are included or which acts are prohibited); and *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1938) (no one may be required at peril of life, liberty, or property to speculate as to the meaning of a penal statute); *but see Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494-95 (1982) (a statute is facially vague only when impermissibly vague in all of its applications).[4]

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[4] Should the ambit of a criminal statute be unclear, the ambiguity should be resolved in favor of lenity. *See United States v. Bass*, 404 U.S. 336, 347 (1971); *Rewis v. United States*, 401

(Continued on following page)

Aside from "fair warning" a statute must also protect against arbitrary and discriminatory enforcement. Should Congress not provide minimal guidelines to govern law enforcement the statute may be deemed unconstitutionally vague. As noted by the Court in *Smith v. Goguen*, 415 U.S. 566 (1973):

> "In such cases perhaps the most meaningful aspect of the vagueness doctrine is not actual notice, but the other principle element of the doctrine – the requirement that a legislature establish minimal guidelines to govern law enforcement."
>
> "Statutory language of such a standardless sweep allows policemen, prosecutors, and juries to pursue their personal predilections. Legislatures may not so abdicate their responsibilities for setting the standards of their criminal law."

*Id.* at 574-75. *See also City of Chicago v. Morales*, 527 U.S. 41, 56 (1999) (vagueness may invalidate a criminal law if it authorizes and even encourages arbitrary and discriminatory enforcement); *Kolender v. Lawson*, 461 U.S. 352, 358 (1983) (the more important aspect of the vagueness doctrine is that legislature establish minimal guidelines to govern law enforcement); and *Papachristou v. City of Jacksonville*, 405 U.S. 156, 168 (1971) (vagueness appears not only on the lack of notice given a potential offender, but also on the effect

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U.S. 808, 812 (1971); *Ladner v. United States*, 358 U.S. 169, 178 (1958); and *Bell v. United States*, 349 U.S. 81, 83 (1955).

of the unfettered discretion it places in the hands of the police).

It is respectfully submitted that 18 U.S.C. § 1346 neither provides "fair warning" nor "minimal guidelines to govern law enforcement."

## II. 18 U.S.C. § 1346 SHOULD BE INVALIDATED AS THE LANGUAGE OF THE STATUTE IS UNCONSTITUTIONALLY VAGUE

Prior to 1987 numerous courts throughout the nation interpreted § 1341 to encompass a scheme or artifice to defraud another of an intangible right to honest services. In *McNally v. United States*, 483 U.S. 350 (1987), this Court held that the mail fraud statute, § 1341, is limited in scope to the protection of tangible property rights. *McNally* involved the prosecution of a Kentucky public official (Gray) and a private individual (McNally) for violation of the mail fraud statute, § 1341. The government's theory was that McNally deprived the citizens and government of Kentucky of certain "intangible rights" to have the "Commonwealth's affairs conducted honestly." *Id.* at 352. The Court held, however, that while the mail fraud statute protects property rights, it does not refer to the intangible right of the citizenry to good government:

> "Rather than construe the statute in a manner that leaves its outer boundaries ambiguous and involves the Federal Government in

> setting standards of disclosure and good government for local and state officials, we read § 1341 as limited in scope to the protection of property rights. If Congress desires to go further, it must speak more clearly than it has."

*Id.* at 360.[5]

Within a year of the Court's decision in *McNally* Congress did attempt to speak more clearly than it had in respect to § 1341. As part of the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, Title VII, § 7603(a), 102 Stat. 4181, 4508 (1988), Congress enacted 18 U.S.C. § 1346 which states that the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services (*see* 2a, *infra*).

While the terms "scheme" and "artifice" contained in § 1346 are adequately defined, especially in relation to §§ 1341 (mail fraud) and 1343 (wire fraud), the phrase "the intangible right of honest services" lacks circumscription. Individually the words contained in the statute have general meanings capable of definition. Together, however, the phrase "the intangible right of honest services" continues to defy limitations that courts and commentators attempt to place around and upon it.

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[5] After determining that the mail fraud statute pertained solely to property rights the Court in *McNally* held that the jury instruction on the substantive mail fraud count permitted a conviction for conduct not within the reach of § 1341. *Id.* at 361.

First, the words "intangible right" are preceded by the definite article "the." In this usage the definite article "the" serves as an adjective and modifies the noun "right." Consequently, the word "the" is referring to a particular "intangible right" rather than a category or group of rights. As the definite article "the" as well as the noun "right" are singular, it is clear that Congress was speaking of a singular privilege.[6] This severely restricts the scope of the statute to a specific "intangible right." This specific right, which is the subject of the statute, is "honest services." The definition of the word "honest" is clear enough for all to know that the statute is intended to proscribe deceit and does not merit further analysis.[7] In enacting the statute, however, Congress used the word "honest" and joined it with the plural of "services" which engenders syntactic ambiguity. The plural "services" is, to a certain extent, inconsistent with the use of the definite article "the" and the singular noun "right" in the beginning of the phrase.

Second, to compound matters, Congress employed the preposition "of" between "intangible right" and "honest services" rather than the preposition "to." By using "of" Congress seems to indicate that the object of the intangible right was the honest service(s) making it a single term of art. If the preposition "to" was employed then it could fairly be said that the intangible right was in respect to the "honest services" and each term could be separately parsed. Consequently, neither the word "services" nor the term "honest services" is readily definable by reference to the other words of the phrase or in the context of the statute.

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[6] *See Cleveland v. United States*, 531 U.S. 12, 19-20 (2000) (amended statute covers one of the intangible rights that lower courts had protected under § 1341 prior to *McNally*: the intangible right of honest services).

[7] Webster's Third New International Dictionary, Merriam-Webster, Inc., 1986 (honest: free from fraud and deception).

Third, in its broadest sense, the word "service(s)" is commonly defined to include "employment, esp. public employment," as well as "work done or a duty performed for another or others."[8] Therefore, "services" could be fairly construed to include both commercial and public sector activities. Unfortunately, Congress was not very clear as to which particular "services" it was requiring be provided with honesty. Nor was Congress explicit as to what "the intangible right of honest services" encompassed.[9] It is clear that by pluralizing "services" Congress intended to bring under the umbrella of § 1346 two or more types of

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[8] Webster's New World Dictionary, Third College Edition, Simon & Schuster, 1991.

[9] One of several definitions of the word intangible is "incapable of being defined with certainty or precision: vague, elusive." *See* Webster's Third New International Dictionary, *supra*. *See also* Synonyms and Antonyms, Chambers Harrap Publishers, Ltd., 2004 (intangible: elusive, imponderable, indefinite, vague).

"services." It is not clear from the plain language of the statute if Congress intended any restriction on the number, class or category of "services" which may be prosecuted within the ambit of the statute. Absent any express limitations in the statute, it may be read to include within its scope any and all activities wherein "services" are provided, whether central to the deceit or which merely constitute marginal acts.[10]

Resort to legislative history for an insight to Congress' meaning and intent is of little value. Entries in the Congressional Record are meager and do not shed much light with the exception of explaining that § 1346 was intended to overturn *McNally* (134 Cong. Rec. H11251 (daily ed. Oct. 21, 1988)); and to reinstate "all of the pre-*McNally* caselaw" (134 Cong. Rec. S17360 (daily ed. Nov. 10, 1988)).[11]

Post-enactment, the constitutionality of § 1346 divided courts, with several arguing that it is simply too vague to provide "fair warning" or "minimal guidelines to law enforcement." *See United States v. Handakas*, 286 F.3d 92, 104 (2d Cir. 2002), overruled in part by *United States v. Rybicki*, 354 F.3d 124 (2d Cir. 2003) ("The plain meaning of 'honest services' in the text of § 1346 simply provides no clue to the public or the courts as to what conduct is prohibited under the statute"); *United States v. Bloom*, 149 F.3d 649, 656 (7th Cir. 1998) ("No one can be sure how far the intangible rights theory of criminal responsibility really extends because it is a judicial gloss on § 1341"); and *United States v. Brumley*, 116 F.3d 728, 733 (5th Cir. 1997) (*en banc*) ("Before *McNally*, the meaning of 'honest services' was uneven").[12]

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[10] The absence of a definitional section prompts twin constitutional concerns: statutes with undefined phrases might present an unconstitutional delegation to the courts and/or be unconstitutionally vague. Rosenkranz, Federal Rules of Statutory Interpretation, 115 Harv. L. Rev. 2085, 2104 (June 2002). *See generally*, Dorf, Facial Challenges to State and Federal Statutes, 46 Stan. L. Rev. 235 (January 1994).

[11] For a full treatment of the legislative history of § 1346, *see* Kurland, The Guarantee Clause as a Basis for Federal Prosecutions of State and Local Officials, 62 S. Cal. L. Rev. 367, 488-490, fn. 450-452 (1989). *See also United States v. Brumley*, 116 F.3d 728, 742-745 (Jolly and DeMoss, JJ., dissenting).

The constitutionality of the statute has been called into question most often by dissent. In *Brumley* the dissent argued that before *McNally* the doctrine of honest services was not a unified set of rules and "Congress could not have intended to bless each and every pre-*McNally* lower court 'honest services' opinion." *Id.* at 733. Further, the dissent urged that "[t]he wording of § 1346 simply does not effect a change in the portion of the *McNally* opinion which held that the mail fraud statute does not reach "'schemes to defraud citizens of their intangible rights to honest and impartial government.'" *Id.* at 745 (Jolly and DeMoss, JJ., dissenting).

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[12] The unevenness of the "honest services" case law pre-*McNally* is acutely evidenced by the multitude of dissimilar matters identified by the *McNally* majority and Justice Stevens in the dissent, *passim*.

Indeed, the scope of the statute caused a split among the circuits with some courts holding that § 1346 required as an element personal gain. *See United States v. Thompson*, 484 F.3d 877, 884 (7th Cir. 2007); *United States v. Turner*, 465 F.3d 667, 676 (6th Cir. 2006); *United States v. Rybicki*, 354 F.3d at 141-42; and *United States v. Bloom*, 149 F.3d 649, 656-57 (7th Cir. 1998). Other Circuits, however, did not require personal gain to be an element of the statute. *See United States v. Skilling*, *supra*; *United States v. Welch*, 327 F.3d 1081, 1107 (10th Cir. 2003); and *United States v. Panarella*, 277 F.3d 678, 692 (3d Cir. 2002).

Illustrative of the contrasting views among the judiciary regarding the vagueness of § 1346 is the *Rybicki* matter. In September, 1995, Thomas Rybicki was charged in New York State Supreme Court with engaging in a scheme to defraud and a single count of commercial bribery. At issue were payments made to the employees of insurance companies through middlemen by Rybicki and his co-defendants to expedite the settlement of personal injury claims. The state trial judge subsequently dismissed the charge of scheming to defraud. In May, 1998, a former state prosecutor familiar with the matter, and now employed by the U.S. Attorney's office in the Eastern District of New York, obtained a federal indictment under 18 U.S.C. §§ 371 (conspiracy), 1341 (mail fraud), and 1343 (wire fraud) in combination with § 1346. Consequently, instead of a single count of commercial bribery in state court, Rybicki was charged with 25 counts of mail and wire fraud in a scheme to deprive insurance companies of the "honest services" of their employees.

During trial the government conceded that all of the settlements were for "fair value." Additionally, that even though payments were made to adjusters, no settlement of a claim was inflated above what would have been a "reasonable range for that settlement." Yet, although no financial loss was proven by the government at the time of trial, Rybicki was still convicted of depriving the insurance companies of the honest services of their employees, lost his privilege to practice law, his law firm was closed down, he was fined $20,000 with an $1,150 special assessment, and sentenced to a term of imprisonment of one year and a day with three years of supervised release. *Rybicki*, 354 F.3d at 127-28.[13]

Following conviction a three member panel of the Second Court held in *United States v. Rybicki*, 287 F.3d 257 (2d Cir. 2002), affirmed but modified in part, 354 F.3d 124 (*en banc*), as follows:

> "We hold that in order to convict a defendant based upon a scheme to defraud another of the intangible right of honest services, as contemplated by 18 U.S.C. § 1346, it is unnecessary to prove that the defendant intended

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[13] Rybicki has completely satisfied his sentence and has been readmitted to the practice of law before the courts of the State of New York.

> economic or pecuniary harm or that any such harm actually resulted from the fraud. All that is required is proof (1) that the defendant engaged in a scheme to defraud; (2) with the intent to deprive another of the intangible right of honest services; (3) that it was reasonably foreseeable to the defendant that the scheme could result in some economic or pecuniary harm to the victim that is more than *de minimis*; and (4) that the mails or wires were used in furtherance of the scheme."

*Id.* at 259-60.

The Second Circuit granted review *en banc* of the aforementioned *Rybicki* panel decision. In its *en banc* decision the Second Circuit affirmed the conviction but modified the elements of "honest services" fraud to include (1) a scheme or artifice to defraud; (2) for the purpose of depriving another of the intangible right of honest services; and (3) the use of the mails or wires in furtherance of the scheme. The Court *en banc* did not hold, as did the *Rybicki* panel, that a required element included a reasonable "foreseeability that the scheme could cause some economic or pecuniary harm to the victim that is more than *de minimis*." Instead, the Court *en banc* adopted a "materiality" test holding that "the misrepresentation or omission at issue for an 'honest services' fraud conviction must be 'material,' such that the misinformation or omission would naturally tend to lead or is capable of leading a reasonable employer to change its conduct." (citing *United States v. Gray*, 96 F.3d

769, 774-75 (5th Cir. 1996), cert. denied, 520 U.S. 1129 (1997)). *Rybicki*, 354 F.3d at 145-46.

In a vigorous dissent to the Second Circuit's majority opinion, Circuit Judge Jacobs, with three other members of the Second Circuit argued that the "'honest services' amendment to the wire and mail fraud statute, 18 U.S.C. § 1346, flunks the test for facial vagueness set forth by the Supreme Court in *City of Chicago v. Morales*, 527 U.S. 41, 119 S.Ct. 1849, 144 L. Ed. 2d 67 (1999)." Further, that "[i]t is only too obvious that there is no settled meaning to the phrase 'the intangible right of honest services' that is capable of providing constitutionally protected notice." *Rybicki*, 354 F.3d at 156, 160. As noted by the dissent in *Rybicki*:

> "The majority opinion's search for a meaning of art leans heavily on the overruled pre-*McNally* case law of other circuits. But '[e]ven the circuits that have reinstated pre-*McNally* law recognize that *ad hoc* parameters are needed to give the statute shape.' *Handakas*, 286 F.3d at 109 (collecting cases). Although a number of circuits have upheld section 1346 against a claim of facial vagueness, there is now wide disagreement among the circuits as to the elements of the 'honest services' offense. These opinions, taken together, refute rather than support the idea that section 1346 has any settled or ascertainable meaning or that the offense it describes has known contours. . . ."

*Rybicki*, 354 F.3d at 162. *See also United States v. Urciuoli*, 513 F.3d 290, 294 (1st Cir. 2008) ("[t]he central problem is that the concept of honest services is vague and undefined by the statute. So, as one moves beyond core misconduct covered by the statute (e.g. taking a bribe for legislative vote), difficult questions arise in giving coherent content to the phrase through judicial glosses").

Although the Second Circuit panel and the Court *en banc* affirmed the convictions, the composition of the Court's majority and dissent in doing so bears comment. On the three member panel sat Chief Judge Walker with Circuit Judges Cabranes and Straub. In the decision authored by the Chief Judge it was specifically stated that the panel agreed with the *Handakas'* panel's observations concerning the vagueness of the phrase "honest services," but was bound by precedent upholding convictions under § 1346 for similar schemes. *Rybicki*, 287 F.3d at 263-64.[14]

When the Court sat *en banc*, however, Chief Judge Walker and Judge Cabranes joined Judge Jacob's dissent (along with Judge Parker), and writing separately stated:

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[14] To the extent that the *Handakas* panel determined that § 1346 was unconstitutionally vague the *Rybicki* Court *en banc* held that as Handakas' conduct did not come within the reach of § 1346 the panel need not have reached that determination. *Rybicki*, 354 F.3d at 144.

> "We write separately to emphasize and explain that it is the opportunity of *en banc* review that frees us from Circuit precedents that compelled us in previous cases to apply the statute that we now would hold unconstitutional on its face."

*Rybicki*, 354 F.3d at 165 (Walker, C.J., dissenting).

If Chief Judge Walker and Judge Cabranes were not bound by Second Circuit precedent at the time the matter was first presented to the Second Circuit, then two of the three members of the panel would have deemed the statute unconstitutional and the convictions of the defendants would have been reversed. Instead the convictions were affirmed and the individual defendants lost their liberty being sentenced to terms of imprisonment for a year and one day. *Id.* at 128. Although the defendants' terms of incarceration in *Rybicki* were not as lengthy as that imposed upon Skilling, the loss of even a single day of liberty is lamentable. Any loss of liberty is undoubtedly tragic if the result of an unconstitutionally vague statute.

The conflicting interpretations of § 1346 by so many courts and other authorities leads to the inescapable conclusion that the statute is indeed unconstitutionally vague. In order to make this statute workable the courts have been required to tether disparate pre-*McNally* case law to a vague post-*McNally* statute. To avoid the clear holding of this Court's decision in *McNally*, that § 1341 does not include within its compass intangible rights, courts have fashioned *ad hoc* interpretations of § 1346 that could not have been intended by Congress' attempt to legislatively reverse *McNally*. Simply stated, the plain language of § 1346 does not give fair warning that it encompasses an act in a commercial setting which did not cause any pecuniary harm to an employer who was purportedly deprived of "honest services."

Of great significance is the fact that in more than twenty years of grappling with this statute, the courts have not yet been able to discern the "outer boundaries" of § 1346. Should the outer limits of the statute not be subject to definition, then conceivably all perceived offenses, large and small, may fall within its ambit. Nor does the statute provide any constraints on law enforcement. For example, even though no specific federal or state statute, rule or regulation proscribes an act of an individual, § 1346 could still be used as a mechanism by which such activity is criminalized in the discretion of an overly zealous prosecutor.

Moreover, § 1346 should not be interpreted so expansively that a circuit court finds itself at odds with a solid minority of the court, including its chief judge, as occurred in *Rybicki*. Rather, Congress must speak clearly as to the scope and the breadth of the statutes it enacts. Failure to do so can only result in a lack of "fair warning" and insufficient guidance to law enforcement. *See Sorich v. United States*, 129 S.Ct. 1308, 1311 (2009) (Scalia, J., dissenting).

◆

## CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that 18 U.S.C. § 1341 should be deemed vague and, therefore, unconstitutional.

Dated: December 17, 2009.

Respectfully submitted,

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## APPENDIX

The Fifth Amendment to the United States Constitution provides in pertinent part that:

> "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law. . . ."

18 U.S.C.A. § 1341 (Frauds and swindles):

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this

> title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C.A. § 1343 (Fraud by wire, radio, or television):

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial

> institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C.A. § 1346 (Definition of "scheme or artifice to defraud"):

> For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

# AMICUS
# CURIAE
# BRIEF

Supreme Court, U.S.
FILED
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No. 08-1394

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IN THE

# Supreme Court of the United States

JEFFREY K. SKILLING,
*Petitioner,*

v.

UNITED STATES.
*Respondents.*

**On Writ of Certiorari**
**To the United States Court of Appeals**
**For the Fourth Circuit**

# BRIEF OF TEXAS CRIMINAL DEFENSE LAWYERS ASSOCIATION AND THE HARRIS COUNTY CRIMINAL LAWYERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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## INTEREST OF THE *AMICI CURIAE*[1]

The Texas Criminal Defense Lawyers Association (TCDLA) is a Texas, non-profit corporation with a membership of more than 2900 attorneys practicing in the State of Texas. TCDLA was organized more than 37 years ago with the following purposes: (1) to protect and ensure by rule of law those individual rights guaranteed by the Texas and United States Constitutions in criminal cases, (2) to resist efforts to curtail such rights, (3) to encourage cooperation between lawyers engaged in the defense of citizens accused of crimes through educational programs and other assistance, and (4) through such cooperation, education, and assistance to promote justice and the common good.

The Harris County Criminal Lawyers Association (HCCLA) was organized in 1970 and has over 500 members from the local bar. Its mission is to assist, support, and protect the criminal defense practitioner in the zealous defense of individuals and their constitutional rights; and further to educate and inform the general public regarding the administration of criminal justice and the need for an independent, ethical, and professional criminal defense bar.

*Amici* will address solely the question of pretrial publicity and the social science research supporting

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[1] Pursuant to Rule 37.6, counsel for *amici* states that no counsel for a party authored this brief in whole or in part and no person, other than *amici*, its members, or its counsel made a monetary contribution to the preparation of this brief. Pursuant to Supreme Court Rule 37.2(a), *amici curiae* certify that counsel of record for both parties received timely notice of *amici curiae*'s intent to file this brief and have consented to its filing in letters on file with the Clerk's office.

Petitioner's position on this critical question. Such research uniformly demonstrates that voir dire and judicial instruction simply cannot cure the very type of negative publicity that attended Petitioner's trial. That these measures are curative where prejudice is obvious proves to be a legal fiction – all the more so in Texas, where opinions, once formed, tend to be firmly held. *Amici* respectfully submit that they are uniquely positioned to address this issue as daily practitioners in the criminal courts of the State and County where Petitioner was tried. *Amici* join Petitioner in urging this Court to reverse Petitioner's conviction and to align the law in this area with accepted social science and good, common sense.

## SUMMARY OF THE ARGUMENT

Social science research validates the principle that the prejudicial effects of inflammatory pretrial publicity cannot be purged through ordinary trial procedures such as voir dire and judicial instruction. The empirical evidence shows that under conditions of presumed prejudice, jurors' statements of impartiality cannot be believed, judicial questioning and admonitions are ineffective if not counterproductive, and community pressure to convict is nearly impossible to overcome.

In this case, the effects of adverse pretrial publicity were clearly reflected in the overwhelming evidence of bias in the venire. Under such circumstances, even a careful and thorough voir dire could not have negated the hostility towards Petitioner that infected the venire and ultimately the jury. Further, the voir dire that was actually conducted by the District Court was wholly inadequate to the task of ferreting out bias among the prospective jurors, and resulted in the empanelling of a jury tainted with prejudice. The record, coupled with empirical research, shows that the presumption of prejudice that arose in this case could not have been and was not rebutted.

## ARGUMENT

This Court has recognized that a presumption of prejudice arises when pretrial publicity is pervasive within a community. In this circumstance, a "juror's claims that they can be impartial should not be believed," and voir dire is an inadequate curative. *Mu'Min* v. *Virginia*, 500 U.S. 415, 429-30 (1991). Research from social psychology confirms fundamental weaknesses in the process of voir dire that have caused several prominent scholars to call into question its effectiveness as a general remedy for pretrial publicity, much less a remedy in cases (like this one) where the prejudice from that publicity is extreme.

### I. WHERE PREJUDICE FROM PRETRIAL PUBLICITY IS PRESUMED, VOIR DIRE CANNOT ENSURE A DEFENDANT'S FUNDAMENTAL RIGHT TO A FAIR AND IMPARTIAL JURY.

Empirical research into jury decision-making confirms the insight that the traditional "indicia of impartiality" are of little use where the "general atmosphere in the community or courtroom is sufficiently inflammatory." *Murphy* v. *Florida*, 421 U.S. 794, 802 (1975).

#### A. Empirical research in social psychology demonstrates that juror assertions of impartiality are untrustworthy.

Studies show that jurors are unable to discount pretrial publicity despite their statements to the contrary. According to one experimental study, jurors who were exposed to highly prejudicial pretrial publicity and claimed that they could disregard it were much *more* likely to convict than jurors who were not exposed.[2] Jurors who are able to recall details of pretrial publicity are also more likely to be favorably disposed to the prosecution, but no less likely to feel that they can hear the evidence with an open mind.[3] In another study, jurors who stated that they could disregard damaging pretrial publicity were as likely to convict as jurors who admitted to doubting their ability to be impartial—illustrating that self-reports of bias are both inaccurate and unreliable.[4] Jurors' assertions of impartiality must therefore be viewed with skepticism—as this Court maintained, for example, in *Irvin* v. *Dowd*, 366 U.S. 717, 728 (1961) ("No doubt each juror was sincere when he said that he would be fair and impartial to petitioner, but psychological impact requiring such a declaration before one's fellows is often its father.") See also *Delaney* v. *United States*, 199 F.2d 107, 113 (1st Cir. 1952) ("One cannot assume that the average juror is so endowed with a sense of detachment, so clear in his introspective perception of his own mental processes, that he may confidently exclude even the unconscious influence of his preconceptions as to probable guilt, engendered by a pervasive pretrial publicity.") (cited favorably in *Irvin*, 366 U.S. at 727 and *Sheppard* v. *Maxwell*, 384 U.S. 333, 354 (1966)); *Groppi* v. *Wisconsin*, 400 U.S. 505, 510 (1971) ("Mr. Justice Holmes stated no more than a commonplace when, two generations ago, he noted that 'any judge who has sat with juries knows that in spite of forms they are extremely likely to be impregnated by the environing atmosphere.'") (quoting *Frank* v. *Mangum*, 237 U.S. 309, 349 (dissenting opinion)).

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[2] Stanley Sue, Ronald E. Smith & George Pedroza, *Authoritarianism, Pretrial Publicity, and Awareness of Bias in Simulated Jurors*, 37 Psychol. Reps. 1299, 1301 (1975) (53% of jurors exposed to damaging pretrial publicity voted to convict, despite claims that they had not been biased by publicity, versus 23% of jurors not exposed to pretrial publicity.)

[3] *See* Amy L. Otto, Steven D. Penrod, & Hedy R. Dexter, *The Biasing Impact of Pretrial Publicity on Juror Judgments*, 18 L. & Hum. Behav. 453, 455 (1994)(describing study that showed that "pretrial knowledge of the case was related to perceived guilt of the defendant," but "subjects' knowledge of the case was not correlated with their reported ability to be impartial."); *see also* Rita Simon & Thomas Eimermann, *The Jury Finds Not Guilty: Another Look at Media Influence on the Jury*, 48 Journalism Quarterly 343, 344 (1991).

[4] Norbert Kerr, Geoffrey Kramer, John Carroll & James Alfini, *On the Effectiveness of Voir Dire in Criminal Cases with Prejudicial Pretrial Publicity: An Empirical Study*, 40 Am. U. L. Rev. 665, 690 (1991)(jurors who claimed that could be impartial after being exposed to pretrial publicity were just as likely to convict as jurors who doubted their ability to be impartial).

Jurors' inability to disregard prejudicial pretrial publicity is consistent with the phenomenon of the *self-serving bias*, or the tendency for people to perceive their own information-processing capabilities as better than average.[5] This bias explains why people who have been exposed to pretrial publicity still believe that they could serve as fair and impartial jurors, while assuming that similarly situated community members could not.[6]

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[5] Christina A. Studebaker & Steven D. Penrod, *Pretrial Publicity: The Media, the Law, and Common Sense*, 3 Psych. Pub. Pol'y & L. 428, 449 (1997).

[6] Studebaker & Penrod, *supra* note 5 at 449 (citing Simon & Eimmerman, *supra* note 3).

Jurors also often withhold information or dissemble during voir dire. Justice O'Connor's observation in *Smith* v. *Phillips*, that a "juror may have an interest in concealing his own bias" or "may be unaware of it," is borne out by empirical research. 455 U.S. 209, 221-22 (1982). Several studies have shown that jurors are likely to exhibit either conscious or unconscious dishonesty during open court questioning.[7] This is unsurprising, as "practically speaking[] it is rare to find a juror willing to openly and honestly discuss his or her beliefs and biases."[8] Juror responses during voir dire are influenced by numerous social factors—for example, the need to conform to a group dynamic[9] or the desire to present themselves as "good citizens" and, as a result, minimize personal bias.[10] In particular, jurors are much less candid when they are questioned by judges rather than attorneys—often out of a response to authority and a desire to provide answers they believe the judge wants to hear.[11] The effect of juror dishonesty is enhanced when the voir dire is conducted in open court, before other jurors, rather than privately and individually.[12] The inclination of jurors to distort their answers to questions posed during voir dire "cut[s] across all age, income, and occupational groups."[13] These risks are particularly acute in high-profile cases where jurors may believe they can achieve notoriety based on their jury service, or they wish to punish a particular defendant; such "stealth" jurors purposefully dissemble to get seated on a jury.[14]

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[7] Newton Minow & Fred Cate, *Who is an Impartial Juror in an Age of Mass Media?*, 40 Am. U. L. Rev. 631, 650 (1991); Richard Seltzer, Mark A. Venuti & Grace M. Lopes, *Juror Honesty During Voir Dire*, 19 J. Crim. Justice 451, 452, 460 (1991)(citing studies, and concluding from independent study of jurors in District of Columbia that "to a significant degree, [] jurors withhold information or lie during voir dire."); Dale Broeder, *Voir Dire Examinations: An Empirical Study*, 38 S. Cal. L. Rev. 503, 506 (1965)("The data contain numerous instances of conscious concealment and lack of candor.").

[8] Minow & Cate, *supra* note 7, at 650 n.123.

[9] Minow & Cate, *supra* note 7, at 650 n.123 (citing David Suggs & Bruce D. Sales, *Juror Self-Disclosure in Voir Dire: A Social Science Analysis*, 56 Ind. L. J. 245, 259 (1981)).

[10] Edward J. Bronson, Discussion Paper Series No. 89-1, The Effectiveness of Voir Dire in Discovering Prejudice in High-Publicity Cases: An Archival Study of the Minimization Effect 28-30 (June, 1989) (presented at the 25th Anniversary of Law and Society Association) (published in the California State University, Chico Discussion Paper Series (1989)).

### B. Judicial instructions to ignore pretrial publicity and to judge the case fairly and impartially are ineffective.

Judicial admonitions to ignore pretrial publicity—like those issued by the District Court in this case—are commonly regarded as sufficient to counter the damaging effects of that publicity. In reality, instructions from a judge to ignore pretrial publicity in high-profile cases do not affect verdicts or the propensity of jurors to contest references to pretrial publicity during jury deliberation.[15] In a study of whether voir dire could work effectively when nearly everyone in the community had been exposed to pretrial publicity, the authors concluded that "reliance on standard cautionary instructions as a remedy for prejudicial pretrial publicity appears to be unwarranted."[16]

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[11] Susan E. Jones, *Judge versus Attorney-Conducted Voir Dire: An Empirical Investigation of Juror Candor*, 11 L. & Hum. Behav. 131, 143-45 (1987); Minow & Cate, *supra* note 7 at 651 (citing Neal Bush, *The Case for Expansive Voir Dire*, 2 L. & Psychol. Rev. 9, 17 (1976)).

[12] Bronson, *supra* note 10, at 28-30.

[13] Jones, *supra* note 11, at 145.

[14] Jerry Markon, *Jurors with Hidden Agendas*, Wall St. J., July 31, 2001.

Indeed, judicial admonitions to ignore pretrial publicity may actually accomplish the reverse—*heightening* the effect of pretrial publicity by reinforcing the very bias they counsel against.[17] Researchers have suggested that admonitions designed to remove bias in fact spur reactance or draw jurors' attention to the material they should be disregarding.[18] The study described above found that, "with respect to jurors' evaluation of the defendant, such instructions were counter-productive, actually strengthening the impact of factual publicity."[19] This effect is particularly pronounced with respect to emotionally arousing publicity, where the impact is "primarily affective and cannot be deliberately disregarded."[20]

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[15] *See* Geoffrey P. Kramer, Norbert L. Kerr, & John S. Carroll, *Pretrial Publicity, Judicial Remedies, and Jury Bias*, 14 L. & Hum. Behav. 409, 430 (1990).

[16] Kramer et al., *supra* note 15, at 430. *See also* Minow & Cate, *supra* note 7, at 648 ("there has not been a single study which indicates that judicial instructions limit the effects of jury bias."); Kerr et al., *supra* note 4, at 675 ("Judicial admonitions had no effect on individual jurors or jury verdicts.")

[17] Kramer et al.. *supra* note 15, at 430; *see also* Joel D. Lieberman & Jamie Arndt, *Understanding the Limits of Limiting Instructions: Social Psychological Explanations for the Failures of Instructions to Disregard Pretrial Publicity and Other Inadmissible Evidence*, 6 Psych., Pub. Pol. & L. 677, 691 (2000)(discussing studies).

[18] Kramer et al., *supra* note 15, at 412 (citing studies).

[19] Kramer et al., *supra* note 15, at 430.

Justice Jackson recognized half a century ago that "[t]he naive assumption that prejudicial effects can be overcome by instructions to the jury. . . all practicing lawyers know to be unmitigated fiction." *Krulewitch* v. *United States*, 336 U.S. 440, 453 (1949) (Jackson, J., concurring) (internal citations omitted). Nowhere is this more true than under circumstances of presumed prejudice, where a barrage of constant and hostile media coverage is likely to make judicial instructions ineffective at best, and counter-productive at worst.

### C. Studies of the effects of voir dire have shown it to be generally incapable of rooting out juror prejudice.

There is also substantial evidence that voir dire generally cannot distinguish between jurors who are prejudiced by pretrial publicity and those who are not. Studies confirm that voir dire is "grossly ineffective not only in weeding out 'unfavorable' jurors but even in eliciting the data which would have shown particular jurors as very likely to prove 'unfavorable.'"[21]

The propensity of jurors to convict does not vary between jurors who survive voir dire and those who are excused for prejudice. One prominent experiment found that "[c]hallenged jurors exposed to the publicity were just as likely to convict as those not challenged, but both were more likely to convict than those never exposed to pretrial publicity," and that, as a result, "the net effect of judges', defense attorneys', and prosecutors' combined challenges was effectively *nil*."[22] Notably, this proposition has been shown to be true even where voir dire is extensive.[23]

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[20] Kramer et al., *supra* note 15, at 412 (citing studies).

[21] Broeder, *supra* note 7, at 505.

Indeed, querying jurors about their exposure to pretrial publicity actually increases the prejudicial effects of that publicity.[24] In other words, the empirical evidence suggests that the very mechanism of voir dire may actually undermine its fundamental purpose.

In short, scholars of pretrial publicity broadly agree that voir dire is a woefully inadequate remedy for pretrial prejudice, and fails in its core function of filtering biased jurors from unbiased ones. A meta-analysis conducted of several pretrial publicity studies concluded that expanded voir dire—along with other remedies to pretrial publicity such as continuances, judicial instructions, trial evidence and jury deliberation—"do[es] not provide an effective balance against the weight of [pretrial publicity]." It noted further that "even the smallest effect contradicts our legal presumption of innocence."[25] This problem is exacerbated under circumstances of extremely widespread and entrenched adverse publicity—circumstances plainly present in this case.

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[22] Kerr et al., *supra* note 4, at 687-88 (emphasis added).

[23] Hedy R. Dexter, Brian L. Cutler & Gary Moran, *A Test of Voir Dire as a Remedy for the Prejudicial Effects of Pretrial Publicity*, 22 J. App. Soc. Psych. 819, 830 (1992). To be sure, the voir dire in the instant case was far from extensive. *See infra* Part II(B)(2).

[24] Lieberman & Arndt, *supra* note 17, at 682 (citing study).

[25] Nancy Mehrkens Steblay, Jasmina Besirevic, Solomon M. Fulero, & Belia Jimenez-Lorente, *The Effects of Pretrial Publicity on Juror Verdicts: A Meta-Analytic Review*, 23 L. & Hum. Behav. 219, 229 (1992).

As the author of one study demonstrating the ineffectiveness of voir dire has commented, "[I]t is not disturbing that voir dire accomplishes so little. What is disturbing is that we expect voir dire to accomplish so much."[26]

### D. When there is strong community reaction in favor of a particular outcome, jurors feel compelled to reach that result.

Empirical evidence on the subject of jury bias confirms the effect of community pressure on jury verdicts.[27] Defined as 'conformity prejudice,' these studies show that "when the juror perceives that there is such strong community reaction in favor of a particular outcome of a trial [ ] he or she is likely to be influenced in reaching a verdict consistent with the perceived community feelings rather than an impartial evaluation of the trial evidence."[28] In high-profile cases, the media often not only reports details of the incident, but also responses from the community, "creat[ing] perceptions that there is a community consensus about what the verdict should be."[29] If jurors believe that there is consensus as to the correct verdict, and that there are expectations that the correct verdict will be reached, jurors will feel pressure to reach that verdict before reentering the community once the trial ends.

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[26] Kerr et al., *supra* note 4, at 699.

[27] *See* Neil Vidmar, *Case Studies of Pre- and Midtrial Prejudice in Criminal and Civil Litigation*, 26 L. & Hum. Behav. 73 (2002).

[28] Vidmar, *supra* note 27, at 81-82; *see also*, Neil Vidmar, *Trial by Jury Involving Persons Accused of Terrorism, in Law and Psychology* (Freeman ed. 2006), *available at* http://ssrn.com/abstract=934792 (examining juror responses on a jury questionnaire and discovering that "jurors were cognizant that a not guilty verdict might be met with outrage by some of their friends, family and co-workers").

[29] Vidmar, *supra* note 27, at 86.

This principle was illustrated by the trial of the individuals accused of the Oklahoma City bombing. The District Court in that case recognized that community pressure can adversely affect the ability of individual jurors to act impartially when "there is such identification with a community point of view that jurors feel a sense of obligation to reach a result which will find general acceptance in the relevant audience." *United States* v. *McVeigh*, 918 F.Supp. 1467, 1473 (W.D. Okla. 1996). It then granted the defendant's motion for change of venue, reasoning that "the entire state had become a unified community, sharing the emotional trauma of those who had been directly victimized." *U.S.* v. *McVeigh*, 955 F.Supp. 1281, 1282 (D. Colo. 1997). When there is a strong community reaction in favor of a particular outcome—as there was in the Oklahoma case, and as there also was in this case—jurors feel compelled to reach that result, notwithstanding their promises to the contrary.

## II. THE VOIR DIRE IN THIS CASE WAS INADEQUATE TO CURE THE PREJUDICE FROM PRETRIAL PUBLICITY.

While the empirical evidence exposes concerns that might arise in theory in many cases, the point is not that publicity is always an insurmountable problem or that voir dire can never operate effectively when executed properly. In the vast majority of cases, a well-executed voir dire can and will identify impartial jurors, and other standard trial protections will ensure jurors' fairness during trial.[30] What the evidence does suggest is that in very close cases, courts should err on the side of transferring venue under Rule 21. And what the evidence shows beyond any question is that when community passion and publicity is so pervasive and intense, voir dire simply will not provide adequate protection no matter how well it is executed, and that venue transfer is the only choice due process permits. In this case, the community fervor and publicity rose to such a fever pitch, rendering any voir dire insufficient to ensure a fair trial. Moreover, the voir dire conducted in this case was so inadequate to combat the adverse pretrial publicity as to be an abuse of discretion.

### A. The pretrial publicity in this case was pervasive and vituperative.

The collapse of Enron had a devastating effect on the community—thousands of Houstonians lost their jobs and retirement savings and the bankruptcy of the company resulted in catastrophic losses for businesses across the city. *United States* v. *Skilling*, 554 F.3d 529, 560 (5th Cir. 2009). Enron's bankruptcy engendered so many victims that media outlets in Houston ran nearly 100 stories from 2001-2004 focusing solely on the victims' stories. Pet. Br. 5. In the media, outraged Houstonians demanded a witch hunt, compared Petitioner to Hitler, Stalin, a child molester or terrorist, and labeled him a 'pig,' 'snake,' 'crook,' the 'equivalent [to] an axe murder.' Pet. Br. 6. The media portrayed Petitioner as obviously guilty and declared that any claim of innocence on his part was 'ludicrous' and part of a 'fantasy world.' Pet. Br. 6. This "reportage" was especially pernicious because social science research shows that information from "neutral" sources such as newspapers have a greater prejudicial effect than other sources.[31]

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[30] *See, e.g., United States* v. *Campa*, 459 F.3d 1121, 1147 (2006)(concluding that voir dire in high-profile case was "model" one where district court conducted "meticulous two-phase voir dire stretching over seven days.")

The responses to questionnaires sent by the District Court to prospective jurors mirrored the sentiments of the media. In the questionnaires, Houston citizens chastised Petitioner as "the devil," "a high class crook," and "guilty as hell." Pet. Cert. Pet. 9. Potential jurors also stated that Petitioner "should be stripped of all [his] assets" and should "spend the rest of [his life] in jail" and "be reduced to having to beg on the corner and live under a bridge." Pet. Cert. Pet. 9.

The number of people in Houston affected by Enron's collapse and the resulting media blitzkrieg (the only appropriate World War II-era metaphor here) thus reinforced the jury's desire to convict.[32] One of the veniremembers selected to sit on the jury responded that he would have "some hesitancy" if he had to tell people that the government did not prove its case. JA852a. Other prospective jurors informed the judge that they were aware of what the Houston community wanted. One stated that he felt that "a lot of people are upset and that—I think there is a sense that people want to get to the bottom of this and find out who was responsible for this happening." JA955a. When pressed on whether there would be moral outrage if the juror went back into the community if he voted not guilty, the juror admitted, "I think a lot of people feel that they're guilty. And maybe they're expecting something to come out of this trial . . . it would be tough." JA956a; see also JA910a (when asked if he thought the defendants were guilty of something, stated: "I think the majority of people out there think so, you know, from what the media puts out."), JA1003a("I would be very upset with the government if they could not prove their case.") During voir dire, the district judge himself acknowledged the social pressure to convict in Houston, noting that there was "a sense of moral outrage" in the community and that "it would take courage" to acquit the defendants. JA956a-957a

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[31] Christina A. Studebaker, Jennifer K. Robbenolt, Maithilee K. Pathak-Sharma & Steven D. Penrod, *Assessing Pretrial Publicity: Integrating Conent-Analytic Effects*, 24 L. & Hum. Behav. 317, 326 (2000).

[32] The size of the community in this case is irrelevant in considering the impact of the prejudicial pretrial publicity. One scholar of the effects of pretrial publicity on jurors has noted, "*in a particular[ly] high-profile case*, a large community may react very much like a small community." Edward J. Bronson, California State University, Chico Discussion Paper Series, *Size of the Community As a Factor in Change of Venue: When a Large Community Becomes Small for Purposes of Venue* (1999). One of the factors that causes a large community to behave in the same manner as a small one is the presence of a "dominant employer or shared economic base," which "enhance[s]homogeneity, informal communication, and shared values." *Id.* at 11.

With the entire city of Houston seeking a simple and anthropomorphic solution to a devastating financial disaster, the jurors in the venire and those ultimately empanelled could not help but feel compelled to bring about a conviction. See *Flamer* v. *Delaware*, 68 F.3d 736, 754 (3d Cir. 1995)(presumption of prejudice cannot be rebutted where "community and media reaction" is so "hostile and so pervasive as to make it apparent that even the most careful voir dire process would be unable to assure an impartial jury.") No possible voir dire could have cleansed the jury of the impressions and biases it formed during the barrage of media coverage that preceded the trial. As this Court has noted, "influence that lurks in an opinion once formed is so persistent that it unconsciously fights detachment from the mental processes of the average man." *Irvin*, 366 U.S. at 727.

### B. The voir dire conducted by the District Court was inadequate to overcome the prejudicial publicity.

Examination of the voir dire conducted by the District Court here reveals numerous fatal flaws. The cursory, superficial—and highly public—questioning by the District Court in conjunction with voluminous evidence of bias in the venire merits a reversal of the conviction.

#### 1. The veniremembers' assertions of impartiality could not be believed.

At the voir dire, the District Court explained the importance of an impartial jury and then asked whether any of the venire had "doubts about [their] ability" to follow the rules. Tellingly, only two venire members indicated at that stage that they could not be fair. This number is particularly shocking considering that only 119 out of 283 potential jurors had previously been struck based on the results of a prescreening questionnaire in which 80% of the 283 expressed negative feelings about Petitioner and his co-defendant, 60% had an unfavorable opinion about the cause of Enron's bankruptcy, 40% openly admitted that they could be not be fair or impartial, and 40% had an opinion about the defendants' guilt. Pet. Br. at 8. As Petitioner's brief details, the venire members who remained after the prescreening had obvious biases. See id. at 9 (discussing potential jurors who remained in the venire despite questionnaires that stated: "they [the defendants] knew exactly what they were doing," "they stole money," and Petitioner was "guilty of knowing what was happening to the company, but did nothing to let the employees know.")

The way in which the District Court conducted the voir dire was also essentially guaranteed to elicit less-than-candid responses from the jurors. Rather than conducting the "extensive, non-public, individualized" voir dire sought by Petitioner,[33] the court held voir dire in a courtroom crowded with reporters and refused to let the defense counsel ask too many questions about prejudice as the court had prohibited "individualized voir dire." Pet. Br. 10. Under such circumstances, and considering the numerous external indicators of bias, the jurors' statements that they could be fair simply should not have been taken at their word.

Notwithstanding the research that establishes that jurors' representations and even beliefs about their own impartiality are inherently suspect, especially in situations of presumed prejudice, the jurors' self-reports of impartiality could not be trusted to rebut the presumption in this case, particularly where those same jurors had previously and repeatedly admitted to prejudice. "Where so many, so many times, admitted prejudice, such a statement of impartiality can be given little weight." *Irvin*, 366 U.S. at 728.

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[33] Again, as noted in the empirical discussion *supra* part I(A), open voir dire has been established to be less effective than private, individualized voir dire, while judge-initiated questioning is concomitantly less effective at eliciting juror candor than attorney-directed questioning.

### 2. The District Court's questioning was incapable of winnowing out prejudice

The District Court's voir dire was far from extended or probing. The court spent a total of only five hours questioning all prospective jurors, with each prospective juror being questioned for only a few minutes. Pet. Br. 10. This truncated process is especially troubling in light of the comparatively lengthy voir dires conducted by trial courts in other high-profile cases. In the Zacarias Moussaoui trial, the voir dire alone took two weeks,[34] while the voir dire in the Timothy McVeigh trial took eighteen days *after* a change of venue had been granted.[35] The voir dire in the trials of Dennis Kozlowski the former CEO of Tyco, lasted one week.[36]

In questioning the jurors, the District Court also ignored many inflammatory responses given in the prescreening questionnaire—for example, statements that Enron's collapse was "criminal" and caused by "widespread greed," and that Enron had "fool[ed] people." *Id.* In the end, despite the clear indicia of bias on the part of numerous venire members, the court struck only seven for cause. *Id.*

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[34] *Untied States* v. *Moussaoui*, No. 1:01-cr-00455-LMB-1, (E.D. Va.) (Criminal Docket).

[35] *See* Nolan Clay & Penny Owen, *Jury Selection Begins Slowly In Bomb Trial: Ex-Tulsan Cried at Blast Site*, Daily Oklahoman, April 1, 1997; Nolan Clay & Penny Owen, *Seven Men, Five Women On Bomb Jury*, Daily Oklahoman, April 23, 1997.

[36] *See* Tatsha Robertson & Jeffrey Krasner, *Jury Selection Begins for Former Tyco Chief Kozlowski's Corporate-Theft Trial*, Boston Globe, Sept. 30, 2003; Samuel Maull, *Lawyers Complete Jury Selection for Tyco Trial*, The Associated Press State & Local Wire, October 3, 2003.

The jurors also exhibited signs of providing the answers they thought would please the judge. For example, Juror 101 (who had in her questionnaire admitted that she was "unsure" if she could be fair), upon being asked by the court if she could decide the case based on the evidence, responded, "possibly." The court then told her that "[w]hat we want are people who can base their decision on the facts that they hear in the courtroom," and asked her again if she could base her decision on what she heard in court. Juror 101 responded, "probably," and the court asked her *again* if she could "in your heart of hearts assure us that that you will base your decision on what you hear in this courtroom?" Finally, she responded, "It will be based on what I hear in the courtroom." Pet. Br. 12. This incidence of leading questioning by the principal authority figure in the proceeding is a paradigmatic example of the phenomenon described above, see *supra* Part I(A), wherein jurors deliver dishonest responses to judge-initiated questioning out of a desire to arrive at the "right" answer. See *United States* v. *Davis*, 583 F.2d 190, 197 (5th Cir. 1978) (endorsing the ABA Fair Trial standard, recommending that jurors be examined individually and out of the presence of other jurors, and requiring that "[t]he questioning shall be conducted for the purpose of determining what the prospective juror has read and heard about the case and how his exposure has affected his attitude towards the trial, not to convince him that he would be derelict in his duty if he could not cast aside any preconceptions he might have"); *United States* v. *Chagra*, 669 F.2d 241, 254 (5th Cir. 1982) (voir dire is not "a means of educating [jurors] about [their] responsibilities," but rather a tool for "discovering the depth and breath of [a juror's] knowledge or attitude").

The five-hour voir dire, after a prescreening process that showed that the vast majority of potential jurors had been exposed to negative publicity about Enron and Petitioner, was incapable of eliminating biased jurors from the panel. And in fact, as Petitioner documents, the seated jurors demonstrated the same level of hostility and prejudice as those jurors excused for cause. Pet. Br. 13-15.

### 3. The District Court failed to provide any justification for keeping the trial in Houston.

It is telling that the District Court denied Petitioner's motion to transfer venue *without holding a hearing* and *before* conducting voir dire, even though "a district court should usually hold a transfer motion in abeyance while conducting voir dire instead of dismissing it at the outset." *Skilling*, 554 F.3d at 559 n.40. See also *Pamplin* v. *Mason*, 364 F.2d 1 (5th Cir. 1966) (trial court's denial of a hearing on defendant's change of venue motion was itself a denial of due process where there was evidence of a hostile community atmosphere). The District Court thus treated as a foregone conclusion the likelihood that the venire would reveal no signs of prejudice, despite copious evidence to the contrary.

The District Court's refusal to transfer the trial is particularly baffling given the ease and routine operation of federal Rule of Criminal Procedure 21, and the utter paucity of reasons for keeping the trial in Houston. In a case such as this, where the government has failed to prove beyond a reasonable doubt that the jury was impartial—and where so much reason for doubt existed—the District Court's action was a clear abuse of discretion. For that reason, this Court should reverse the conviction.

## CONCLUSION

The decision below should be reversed, and the case remanded for a new trial.

Respectfully submitted,

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